TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 559

DAISY LARGENT, APPELLANT,

vs.

THE STATE OF TEXAS

APPEAL FROM THE COUNTY COURT OF LAMAR COUNTY, TEXAS

FILED DECEMBER 1, 1942.

SUPREME COURT OF THE UNITED STATES

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No. 559

DAISY LARGENT, APPELLANT,

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JANUARY 16, 1943.

—4140

[fol. 1] [Caption omitted]

[fol. 2]

IN CORPORATION COURT OF CITY OF PARIS, TEXAS

COMPLAINT—Filed June 11, 1941

In the Name and by the Authority of the State of Texas:

Before the Undersigned Authority on this day personally appeared Jack Reeves who, being sworn, says, that heretofore on to-wit; Nov. 26th, 1917 the City Council of the City of Paris duly made and passed an Ordinance #612 creating a public emergency requiring that any person, firm or corporation to sell or solicit books, wares, merchandise or any household article whatsoever within the residence district or portion of the City of Paris, without first obtaining a permit from the Mayor.

Said ordinance requiring that the person, firm or corporation must make application and in same shall state the character of the goods, wares or merchandise intended to be sold or the nature of the canvass, the name and address of the party desiring a permit.

That heretofore on, to-wit: June 9th, 1941, one Mrs. Daisey Largent did then and there unlawfully offer for sale books within the residence portion of the City of Paris, Texas, at #120, Brown Ave. *St.* without having first applied or made application for a permit from the Mayor of the City of Paris, Texas.

On or about the time aforesaid, the said Mrs. Daisey Largent, did unlawfully attempt to solicit for the sale of books from one Mrs. H. J. Baze, at #120, Brown Ave. in the City of Paris, Texas, without first having obtained a permit from the Mayor of said City of Paris, Texas, to solicit and sell books, within the corporate limits of the incorporated City of Paris, Texas, against the Peace and dignity of the State.

Jack Reeves.

Sworn to and subscribed before me by Jack Reeves this 9th day of June, 1941. H. L. Jones, City Attorney in and for City of Paris.

Filed this 8 day of August, 1941. Clyde Humphrey, Clerk, County Court, Lamar County, Texas, by R. G. Coleman, Deputy.

[fol. 2A] IN CORPORATION COURT OF CITY OF PARIS, TEXAS

No. 6536

THE STATE OF TEXAS

vs.

MRS. DAISEY LARGENT

Transcript of Judgment

Trial and Miscellaneous Fees

	Dollars	Cts.
Trial Fee	3	00
Swearing Witnesses		40
County Attorney's Fees	5	00
Jury Fee	3	00
Fine	200	00
Total Costs	211	40

Complaint Filed the 11 day of June, 1941
Made by Jack Reeves
Against Mrs. Daisey Largent
Charged with Offering for sale Books without permit
Warrant Issued the 9 day of June, 1941
Placed in hands of Constable
Mailed to the Sheriff of —— ——
Returned —— —— Executed —— —— day of ——, 19—
Subpoena Issued the —— —— day of ——, 19 —
Returned —— —— Executed —— —— day of ——, 19 —

Date July 23, 1941.

This day in open court the case was called for trial and both parties appeared and announced ready for trial, and thereupon a jury of —— and five others was duly selected, impaneled and sworn and the complaint and warrant herein having been read to the defendant in the presence of the jury, *he* pleaded not guilty herein, and the jury having heard the evidence, returned into Court, in due form, the following verdict:

We the jury find the defendant Mrs. Daisey Largent guilty as charged and assess his punishment at a fine of 200.00 dollars.

Harry I. Miller, Foreman of the Jury.

[fol. 2B] It is therefore considered and adjudged by the Court that the State of Texas do have and recover of the said defendant, Mrs. Daisey Largent the said sum of 200.00 dollars fine, and all costs of this prosecution, and that *he* remain in the custody of the City Marshall of the City of Paris, Texas, until said fine and all costs are fully paid; and further that execution issue to collect the same.

J. T. Evans, Jr., City Recorder of the City of Paris, Texas.

THE STATE OF TEXAS,
County of Lamar:

I, J. T. Evans, Corporation Judge, do hereby certify that the above and foregoing is a true and correct Transcript of all the proceedings had in my Court in the cause of The State of Texas vs. Mrs. Daisey Largent, No. 6536 on the Criminal Docket of said Court, including a bill of the costs accrued in said cause.

Witness my official signature, at Paris, Tex. this 29 day of July, 1941.

J. T. Evans, Jr., Corporation Judge, Paris, Lamar County, Texas.

Endorsement: Filed this 8 day of August, 1941. Clyde Humphrey, Clerk, County Court, Lamar County, Texas, by R. G. Coleman, Deputy.

[fol. 3] IN COUNTY COURT OF LAMAR COUNTY, TEXAS

No. 2200-B

STATE OF TEXAS

vs.

DAISY LARGENT

MOTION TO QUASH COMPLAINT—Filed November 2, 1942

Now comes the defendant in the above entitled and numbered cause and moves the Court to quash the complaint and discharge the defendant for the following reasons:

1

The ordinance under which the complaint is drawn and filed against this defendant is void on its face because it is in excess of the police power of the State of Texas

or the City of Paris and the means employed have no reasonable relation to the ends aimed at by the ordinances therefore is unreasonable and deprives defendant of her property and liberty without due process of law and equal protection of the law, all contrary to the Constitution of the State of Texas and the Fourteenth Amendment to the United States Constitution.

2

The Ordinance is void on its face because it confers arbitrary and discriminatory powers upon the Mayor of the City of Paris in that there is no instruction upon the exercise of his unlimited discretion conferred in the Mayor to grant or refuse permits that may be issued under the ordinances. Therefore it denies defendant of her liberty and property without due process of law and equal protection of the laws contrary to the Constitution of Texas and the Fourteenth Amendment to the United States Constitution.

3

The ordinance is void on its face because by its terms, it abridges the people's inherent and inalienable rights of freedom of communication, of assembly, the use of the public streets for a lawful purpose, freedoms of speech and of press, contrary to the Constitution of the State of Texas and First and Fourteenth Amendments to the Constitution of the United States.

[fol. 4] 4

That from the facts alleged in the complaint, the ordinance has been construed in such a manner as to abridge the defendant's rights of freedom of communication, of assembly, the use of the public streets for a lawful purpose, freedoms of speech, and of the press, contrary to the Constitution of the State of Texas and the First and Fourteenth Amendments to the United States Constitution.

Wherefore, defendant prays that Court quash the complaint and discharge the defendant together with his costs.

Tom S. Williams, Hayden C. Covington, Attorneys for Defendant.

[File endorsement omitted.]

Motion overruled Nov. 2, 1942—Defendant excepts.

Eugene F. Harrell, County Judge.

IN COUNTY COURT OF LAMAR COUNTY, TEXAS

[Title omitted]

ORDER OVERRULING MOTION TO QUASH—Filed November 2, 1942

On this the 2nd day of November, 1942, at a regular term of this court in the above entitled and number- cause came on to be heard and considered the defendant's motion to quash the complaint, duly filed and presented to the Court in the time and manner required by law, and the Court after hearing argument of counsel thereon was of the opinion that the same should be overruled; therefore,

It is hereby ordered, adjudged and decreed by the Court [fol. 5] that said motion to quash be and the same is hereby in all things overruled to which action of the court the defendant then and there in open court excepted.

Done at Paris, Lamar County, Texas, on November 2nd, 1942.

Eugene F. Harrell, Judge of the County Court of Lamar County, Texas.

IN COUNTY COURT OF LAMAR COUNTY, TEXAS

[Title omitted]

MOTION FOR A FINDING OF NOT GUILTY AND FOR JUDGMENT—Filed November 2, 1942

Now comes the defendant in the above entitled and numbered cause and moves the court to find the defendant not guilty and for a judgment of acquital and dismissing the complaint and discharging the defendant for the following reasons:

1

The ordinance under which the complaint is drawn and filed against this defendant is void on its face because it is in excess of the police power of the State of Texas or the City of Paris and the means employed have no reasonable relation to the ends aimed at by the ordinances therefore is unreasonable and deprives defendant of her property and liberty without due process of law and equal protection of

the law, all contrary to the Constitution of the State of Texas and the Fourteenth Amendment to the United States Constitution.

2

The ordinance is void on its face because it confers arbitrary and discriminatory powers upon the Mayor of the City of Paris in that there is no instruction upon the [fol. 6] exercise of his unlimited discretion conferred in the Mayor to grant or refuse permits that may be issued under the ordinances. Therefore it denies defendant of her liberty and property without due process of law and equal protection of the laws contrary to the Constitution of Texas and the Fourteenth Amendment to the United States Constitution.

3

The ordinance is void on its face because by its terms, it abridges the people's inherent and inalienable rights of freedom of communication, of assembly, the use of the public streets for a lawful purpose, freedoms of speech and of press, contrary to the Constitution of the State of Texas and the First and Fourtenth Amendments to the United States Constitution.

4

That from all the facts and circumstances established in the evidence it appears that if the ordinance in question is construed and applied to cover the activity of the defendant that said defendant's rights of freedoms of assembly, speech, press, and to worship Almighty God Jehovah by serving as His ordained minister preaching the Gospel of God's Kingdom, all of which rights are denied contrary to the Texas Constitution and the First and Fourteenth Amendments of the United States Constitution.

Tom S. Williams, Hayden C. Covington, Attorneys for Defendant.

[File endorsement omitted.]

Overruled.

Eugene F. Harrell.

[fols. 7 & 8] IN COUNTY COURT OF LAMAR COUNTY, TEXAS

[Title omitted]

ORDER OVERRULING MOTION FOR JUDGMENT—November 2, 1942

On this the 2nd day of November, 1942, at a regular term of this court in the above entitled and numbered cause came on to be heard and considered the defendant's motion for a judgement of acquittal and finding of not guilty, duly filed and presented to the court at the close of all the evidence and when both parties announced that they closed their case, and the Court after hearing argument of counsel thereon was of the opinion that the same should be overruled; therefore,

It is hereby ordered, adjudged and decreed by the Court that said motion for judgment of acquittal and finding of not guilty be and the same is hereby in all things overruled to which action of the court the defendant then and there in open court excepted.

Done at Paris, Lamar County, Texas, on November 2nd, 1942.

Eugene F. Harrell, Judge of the County Court of Lamar County, Texas.

[fol. 9] IN COUNTY COURT OF LAMAR COUNTY, TEXAS, NOVEMBER TERM, 1942

No. 2200-B

STATE OF TEXAS

vs.

DAISEY LARGENT

Statement of Facts

At a regular term of the County Court of Lamar County, Texas, the November, 1942, term held in the Courthouse at Paris, Lamar County, Texas, thereof the above entitled and numbered case was duly called for trial on November 2nd, 1942, at which time and place the Court was duly convening and there was present the following: Honorable Eugene F. Harrell, County Judge; J. M. Baswell, County

Attorney, representing the State of Texas, Plaintiff herein; Tom S. Williams, Sulphur Springs, Texas; and Hayden C. Covington, San Antonio, Texas and Brooklyn, New York, attorneys for the defendant.

There not being a regular court reporter for County Court and the parties being unable to obtain an official court reporter of the District Court of Lamar County, Texas, it was stipulated between the parties that Janetta Wyche, a shorthand reporter and private stenographer of Fort Worth, Texas, report the evidence and proceedings of the trial. By leave of Court, said reporter, Janetta Wyche, was permitted to take down the testimony in shorthand and to report the proceedings of the trial. Thereupon the Clerk of this court under the direction of Honorable Eugene F. Harrell, Judge of the County Court, duly and regularly administered the oath, the regular oath administered to Court Reporters. Thereupon the trial of said cause proceeded.

Be it remembered that upon the second day of November, 1942, upon the trial of the above entitled and numbered cause in the County Court of Lamar County, Texas, the following proceedings were held and the evidence adduced, to wit:

ORDER OVERRULING MOTION TO QUASH

Defendant presented Motion to Quash and Dismiss, which Motion was overruled by the Court, to which action exception was taken by Defendant.

PLEA OF NOT GUILTY

Plaintiff presented complaint to Court charging Defendant with offering for sale books without a permit, to which complaint the defendant plead "not guillty".

Plaintiff's Exhibit "B", Ordinance No. 612 was presented and read to the Court (not being a certified copy, but accepted subject to proof by Defendant).

[fol. 10] PLAINTIFF'S EXHIBIT "B"

ORDINANCE NO. 612

An ordinance regulating the soliciting of orders for books, wares, merchandise of household articles of any character whatsoever and the sale of books, wares, merchandise or household articles of any character whatsoever, the can-

vassing and census taking in the residence district of the City of Paris, providing for the issuance of a permit by the Mayor prescribing penalties and declaring an emergency.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PARIS:

Section 1:—

From and after the passage of this ordinance it shall be unlawful for any person, firm or corporation to solicit orders for books, wares, merchandise, or any household article of any description whatsoever within the residence portion of the City of Paris, or to sell books, wares, merchandise or any household article of any description whatsoever within the residence district of the City of Paris, or to canvass, take census without first filing an application in writing with the Mayor and obtaining a permit, which said application shall state the character of the goods, wares, or merchandise intended to be sold or the nature of the canvass to be made, or the census to be taken, and by what authority. The application shall also state the name of the party desiring the permit, his permanent street address and number while in the city and if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation.

Section 2:—

The issuance of such permit by the Mayor shall not confer upon the holder thereof any rights to enter any residence contrary to the wishes of the owner or occupant of same and the holder of any such permit shall be respectful and considerate in dealing with the occupants of the residences and on complaint of any person this permit may be revoked and canceled by the Mayor.

Section 3:—

The issuance of this permit shall not be held to confer any right on the holder thereof to peddle or sell merchandise without first obtaining a peddlers license and paying the fee therefor.

[fols. 11-12] Section 4:—

Any person, firm or corporation violating any or all of the provisions of this ordinance or who attempts to solicit for the sale of books, wares, merchandise or any household article whatsoever or to sell any of the same or to canvass or to take census within the residence district of the City of Paris without first obtaining a permit from the Mayor shall be deemed guilty of a misdemeanor and on conviction thereof in Corporation Court, be fined in any sum not less than $5.00 or more than $200.00.

Any person having a permit to solicit, sell canvass or take census within the residence district of the City of Paris who shall become abusive or act in an overbearing or insulting manner to any of the occupants or owners of the residences within said City shall be deemed guilty of a misdemeanor and on conviction thereof in Corporation Court be fined in any sum not less than $5.00 or more than $200.00.

The fact that the housewives and occupants of residences within the City of Paris are annoyed and harassed by indiscriminate canvassing, census taking, etc., and that there is no ordinance at present covering same, creates a public emergency, requiring that the rules and charter provisions prohibiting the passage of an ordinance at the meeting introduced requiring same to be submitted to a committee, be suspended and the same is accordingly done and this ordinance will take effect from and after the date of its approval by the Mayor.

Adopted 11/26/17.
Ayes 4—Nays 0.

Next the Plaintiff offered the Judgement of the Corporation Court to the County Court and in which this judgement is certified to be the judgement of the Corporation Court, Paris, Lamar, County, Texas, the 29th day of July, 1941, carrying a judgement in there of the jury finding Mrs. Daisy Largent guilty as charged and assessing fine of $200.00 and signed by the foreman, Mr. Harry I. Miller. Now we submit that. (Presented and marked as Plaintiff's Exhibit "A").

Transcript of Judgement from Corporation Court omitted. Printed side page 2-A *ante*.

* * * * * * *

[fol. 13] COLLOQUY OF COUNSEL

Defendant here offered to stipulate many of the facts in the case to save the Court's time, to which offer the Plaintiff demurred stating that he was not familiar with the State's facts any more than what was set out in Judgement, Complaint etc.

Mr. Covington: I can tell you that she had the literature and that she was going from house to house with it. She was distributing it and from some she took money contributions and from others she did not but gave literature. She did not apply for a permit. She did not have a permit as the ordinance requires and there are certain reasons why she did not which we would like to state as part of our defense, but we admit more or less the main facts in the complaint and we would like to state our story.

Mr. Baswell: You made one statement that I don't know whether I could agree upon either here or from the evidence and that was "contribute"; you said "contribute" and not a sale. We admit that she was selling and offering for sale. Your statement would be it was contributing and a voluntary contribution to the party to whom she delivered the literature, and not a sale.

Mr. Covington: She used a card and offered that literature by printed card and it speaks for her and when that was offered she explained——

Mr. Baswell: I tell you what let's do. Of course, the State's case lies in the Ordinance just read and what the evidence discloses and the State will rest here for the Attorney to offer testimony.

[fol. 14] Mr. Covington: Based on statements I have made?

Mr. Baswell: Yes.

Mr. Covington: I will offer witnesses. I would first, if your Honor please, would like to call Mr. Joseph Isaacs, who is the District Representative of Jehovah's witnesses and can explain the general work and will testify that she is a duly authorized representative and then she will get on the stand and tell what she was doing.

Mr. Baswell: That will be all right.

JOSEPH ISAACS, witness for defendant, having been duly sworn, did testify as follows:

Direct examination:

Mr. Covington: The parties admit that the ordinance in question is in full force and effect now and has been in full force and effect in the City of Paris ever since the date of its passage and was in full force and effect on the dates alleged in the complaint. That is a fact, Judge?

Judge Harrell: Yes.

(Here Ordinance #612 introduced as Exhibit "B" for Plaintiffs on Page Two hereof was checked with original record and attested to, entered and marked as Plaintiff's Exhibit "B".)

Mr. Covington: Now, Mr. Isaacs, you will have to talk louder than you do ordinarily in conversation so that the Judge and everybody in the court can hear. State your name, your age, your home address and your occupation.

Mr. Isaacs: Joseph Isaacs. Fifty-seven. Route Nine, Buckner Boulevard, Dallas, Texas. My occupation is a minister.

Q. Mr. Isaacs, with what organization are you affiliated as a minister of the Gospel?

A. With the Watch Tower Bible & Tract Society of Brooklyn, New York.

Q. And is that the organization that is used by the group which is commonly known as Jehovah's witnesses?

A. It is.

Q. Now explain to the Judge the connection between the two.

A. The Watch Tower Bible and Tract Society is incorporated for the purpose of publishing Bibles and Bible helps to assist Christian people in the study of God's Word. In recent years in the study of the Bible, we have found, with these helps, that the time had come when Jehovah would have his witnesses declare prior to the full establishment of the Kingdom and the complete destruction of the [fol. 15] Devil's organization as He foretold in the Bible, therefore it was recognized to us both in the Old Testament and the New that Jehovah God——

Mr. Baswell: Now, judge, that is superfluious.

Mr. Covington: Judge, I will show the connection with this in just a minute. I am merely trying to clear up the

record by trying to learn the background. He will later testify that she is one of Jehovah's witnesses and worked as such and this is the background of what she was doing and that this organization prints the books and you will want this background and if we can give a few facts then you can better appreciate the case. I don't want to make a long, drawn-out issue, but when you see the connection that she is a representative of the Watch Tower Bible Society and also one of Jehovah's witnesses and that this work she was doing is one of the required methods of this organization, then we will go into the details of her activities, but it seems logical to have the background.

Mr. Baswell: As far as I am concerned, it is not necessary to go into this and begin calling scriptures from Genesis to Revelation.

Judge Harrell: That is your objection to those questions?

Mr. Baswell: I was objecting to his going into all that detail.

Mr. Covington: I can shorten it to about five minutes and then she can take the stand and tell what she was doing.

Mr. Baswell: About the only thing necessary in that is that it is an organization and you have already done that and the organization has its function and was functioning as an organization as incorporated; now then why this of going into all the details of what the Scriptures said about it and this interpretation of the Scriptures; it is not necessary in a criminal case.

Mr. Covington: This is not a criminal case, but is tried under the criminal laws of the City.

Judge Harrell: Objection sustained.

Mr. Covington: We would like to make an offer of proof in connection with this exception to show what bill of exception would have there to show what the witness would have testified and in as much as the court has already made a ruling, I would like to take exception to the Court's ruling and make an offer of proof.

Mr. Baswell: I don't think that that is necessary really; [fol. 16] you have already testified as to what it did as an organization and I don't think that they have any headquarters in Texas.

Mr. Covington: I would like to show that——

Mr. Baswell: What I was really objecting to—probably you didn't get my objection thoroughly, was that it wasn't necessary to incorporate the provisions of the Scriptures

in connection with this thing of what they were doing and why. There is the organization they have——

Mr. Covington: This is the method employed by the defendant to preach and we are entitled to show it is the method and that it is respected by the Constitution of the State of Texas and the United States and to show the Court of Criminal Appeals and Supreme Court that this ordinance has been wrongly construed and applied in this particular case.

Mr. Baswell: I don't get this from the ordinance in that, of course, I am not trying to be antagonistic and mean, but I think, this is off the record—I still insist on the objection as to all of that particular going into the Scriptures and all, because it never ends whenever you get started. We are not in a religious organization or atmosphere in the trial of this case, but whether or not this was a sale.

Mr. Covington: Of course, she was acting as a representative of the organization.

Mr. Baswell: I have never objected to proving by Reverend Isaacs here that that was their function and method of preaching, but why a lot of Scripture that is their decision? I don't think it is right. I think it is just a little bit offside. I don't think it is necessary.

Mr. Covington: Judge, I do and, of course, we have the right to disagree with one another.

Mr. Baswell: That is right.

Mr. Covington: Mr. Isaacs, the Watch Tower Bible and Tract Society is organized under the laws of Pennsylvania and New York?

Mr. Isaacs: I think so.

Q. Headquarters in New York?

A. Yes.

Q. Incorporated for the purpose of preaching the Gospel of God's Kingdom?

A. Yes.

Q. How long have you been connected with that organization?

A. Since 1906, February, 1906.

[fol. 17] Q. And the organization, the Watch Tower Bible and Tract Society, is used, is it not, as an organization for Jehovah's witnesses?

A. Yes.

Q. And everyone of Jehovah's witnesses operate under the direction of that organization?

A. Yes.

Q. Throughout the entire United States and England, at this time?

A. That is my understanding.

Q. What is the method that is employed by the Watch Tower Bible and Tract Society and Jehovah's witnesses in carrying on this work of preaching the gospel of God's Kingdom?

A. To present to the people the Bible and textbooks enabling them to look up the different texts to the different subjects in full in a short while and permit them to get vital knowledge.

Q. And these books that are distributed, where are they distributed?

A. They are distributed in the mail by the Lord's organization in most of the cities, by house to house preaching seeking in that way to proclaim this message like the Lord.

Q. Also distributed on the streets?

A. Yes, sir.

Q. Is this method of calling from house to house and preaching to the people, is that—why is that method employed of calling at homes instead of building churches?

A. Religious census have proven that the vast majority of the people do not attend religious services regularly, and therefore in order that those who do not attend might have the information they use that method and of the radio and other means.

Q. Isn't that method from house to house used because it is the only way of reaching all the people?

A. Yes.

Q. And if we built churches we could not get all the people in?

A. Stands to reason that we could not, of course, get everybody in one building.

[fol. 18] Q. Why is it, Mr. Isaacs, that the books are used in explaining these things, the printed page?

A. Beg Pardon.

Q. Why is it that you employ the printed page, the books?

A. Our understanding is that in the fulfillment of prophecy that great would be the number of people that publish and preach for the Kingdom and in order that people might

yet hear and might investigate these subjects in their own home and by reason of having them for future reference.

Q. In other words, they are being published so that they can have a permanent record?

A. Yes.

Q. Is it necessary to have the Bible to study these books?

A. Yes, some have 350 or more scripture citations.

Q. Is this method employed by Jehovah's witnesses in going from the homes of people, is that recognized as an old method of preaching the Gospel?

A. Yes, it is. Recently in one of the Dallas papers, I believe it was a Baptist preacher, who said it looked as if they would have to go from house to house and preach to the people as the Apostles did of old. And that is an example of how very important it is to contact the people and arouse them and if we don't their blood when their destruction comes is upon our heads, but if we inform them and they die in their iniquities their blood is upon themselves.

Q. Did the Lord Jesus and the Apostles preach from house to house?

A. Yes, they did. He and the twelve apostles went from city to city and house to house.

Q. The Scriptures support that, don't they?

A. Yes.

Q. Are present-day Christians, who desire to preach, admonished to preach in that way?

A. Yes, they are.

Q. Is that why Jehovah's witnesses go from house to house?

A. Certainly is the reason, because they have made a covenant with God to do Jehovah's will and to be followers of Jesus Christ.

[fol. 19] Q. Is this work done in every city throughout the nation?

A. Every city I have been in I have found witnesses working along this line.

Q. What—(Withdraw question). Now what do Jehovah's witnesses feel would happen to them should they not do this work of preaching from house to house.

A. They would feel as if they were covenant breakers and that they would have the disapproval of the Lord.

Q. Do everyone of Jehovah's witnesses act as ordained ministers of the Watch Tower in going from house to house?

A. Yes, if they are Jehovah's witnesses. They would have to be commissioned by Jehovah through His word to be a minister.

Q. Explain the nature of ordination of one who preaches from house to house.

Mr. Baswell: I don't see what is necessary about that. That don't have——

Mr. Covington: I withdraw the question. Cut it out as unnecessary.

Mr. Covington: Do you know this Daisy Largent?

Mr. Isaacs: Yes, I do.

Q. How long have you known her?

A. First I met her in 1938.

Q. Mr. Isaacs, in what capacity were you serving the Watch Tower at that time?

A. At that time I was in Houston, Texas and representing them with the local organization.

Q. And at that time you met her?

A. At a convention.

Q. After you came to Dallas, did you ever have occasion to visit the City of Paris?

A. Yes, the reason I moved to Dallas, they wanted me for their representative or Zone Servant for the District.

Q. Explain the duties of Zone Man. Sort of traveling superintendent for these ministers in districts?

A. Yes, it is. To assist them and encourage them and help them in the work they are doing.

[fol. 20] Q. Was the City of Paris within your jurisdiction?

A. Yes.

Q. Did you become acquainted with Daisy Largent here in Paris?

A. Yes.

Q. When did you first meet her in Paris, or do you remember?

A. In the Spring of '41.

Q. Spring of '41. And that was when you first took over the Paris district?

A. No, I took over the Paris District in the Fall of 1939.

Q. Was that on the occasion of your first visit to Paris?

A. No, it wasn't.

Q. Do you know whether at that time the defendant, Daisy Largent, was acting as a duly recognized representative of the Watch Tower Bible & Tract Society?

A. Yes, when I met her, I can't remember the name of the representative of the Society who stated that she was representing them in another city and in about May 1 came here and met her in the work.

Q. At that time and during the time you have served, as long, that is as a regular representative, did you recognize her as a duly ordained representative of that Society?

A. Yes, and I marveled at her zeal because she had four children and she was a widow of a world war veteran living from a small pension and regardless of all handicaps that she was very zealous and continued in her work.

Q. Then at that time she was recognized here as an ordained minister?

A. Yes.

Q. Do you recognize her as one of Jehovah's witnesses?

A. Yes.

Q. Do you know whether or not she went from house to house?

A. Yes, I do.

Q. Mr. Isaacs, what is the number of times that you called here in Paris at which times you found her to be preaching the Gospel here?

A. Well, three or four or five times. Can't think.

[fol. 21] Q. How often did you make trips through Paris?

A. Don't remember exactly. Every three or four months.

Q. Mr. Isaacs, is this work that is done by Jehovah's witnesses under the direction of the Watch Tower Society done by compulsion or is it voluntary work?

A. Strictly voluntary work.

Q. Do Jehovah's witnesses and the Watch Tower Bible & Tract Society have a membership roll that they attempt to get people to join up to?

A. No, Sir, they don't.

Q. Why do they call at people's homes? What is their purpose?

A. Purpose is to preach the message of the Lord, encouraging other Christians to study the Bible to learn what the Lord's will is.

Q. The Watchtower Bible & Tract Society is a benevolent, charitable corporation, isn't it?

A. It certainly is.

Q. How is its activities supported, by contributions of its members to the Society?

A. From voluntary contributions.

Q. Who was the first president of the Watch Tower?

A. Commonly known as Paster Russell.

Q. Upon his death he was succeeded by whom?

A. Judge Rutherford.

Q. And upon the death of Judge Rutherford who succeeded him?

A. The present president, N. A. Knorr, of Brooklyn, New York.

Q. Prior to the advance of Fascism and Nazism, did the Watch Tower have offices in every country of the globe?

A. I knew of about seventy some odd.

Q. Since the advance of Nazism, what has happened to the organizations in the countries over-run by Axis powers?

A. Many of our brethen have been killed and persecuted. Especially in Germany where hundreds are in concentration camps.

[fol. 22] Q. What has happened in Norway and France and other countries that have been over-run?

A. The same persecution as in the totalitarian nations.

Q. When did the killing and imprisonment of the representatives of the Watch Tower begin in Germany?

A. As soon as Hitler came into power. One of his first acts was to close down our printing presses. Through the government of the United States effort was made to get him to release this equipment, but was in vain and thousands of Bibles and Bible literature was destroyed by him.

Q. The organization is now operating in Great Britain and the United States?

A. Seems as if their greatest work is being done in these two countries.

Judge Harrell: It is almost twelve, I'm not trying to rush you, but we work by the clock.

Mr. Covington: I think that will be all.

Judge Harrell: We will recess until 1:30.

(Recess.)

Mr. Covington: Mr. Isaacs, in the performance of your duties as a minister to the Watch Tower Bible & Tract

Society and as one of Jehovah's witnesses are you self-sustaining or do you receive a salary?

Mr. Isaacs: I don't receive a salary and I don't know of any who do receive a salary. We bear our own expense.

Q. In what manner do you sustain yourself?

A. Well, I have been fortunate enough to know a trade and had little contracts in Dallas and Houston from time to time and in that way was able to accumulate a little money ahead and bear my own expense?

Q. Do you know whether or not the organization known as the Watch Tower and Jehovah's witnesses are loyal American citizens?

A. As far as I know we are loyal. I am and it seems to me like that the fact that we are here asking this court to consider our case shows we are loyal.

Q. Do they believe in protecting constitutional rights?

A. Certainly, that is what we are fighting for right now.

Q. Does the organization have any connection with any foreign power or any political activity?

A. I have never heard of any Jehovah's witnesses or the [fol. 23] organization's having anything to do with any foreign power or political organization.

Q. They are not for any foreign power?

A. No, sir.

Q. What is the attitude of the organization toward the Nazi Facist rule?

A. I have had the privilege with them of putting out millions of pamphlets exposing that rule even before the present war broke out.

Q. Doesn't the organization conduct schools for the purpose of training ministers?

A. I have attended Bible schools since about the later part of 1905.

Q. And are those schools conducted in various parts of the country and many communities?

A. Yes, and the purpose is to instruct them in the Bible and textbooks and to know how to present it in an effective way for the people to learn.

Q. Educational training in these Bible schools is required to become ordained ministers?

A. Certainly.

Cross-examination:

Mr. Baswell: Mr. Isaacs, you say the name of your organization is called what?

Mr. Isaacs: The Watch Tower Bible & Tract Society.

Q. The Watch Tower Bible & Tract Society. Where is its headquarters?

A. Brooklyn, New York.

Q. Is it a corporation or just an association?

A. A corporaton.

Q. A Corporation?

A. Yes, sir.

Q. And as such corporation does it extend all over the United States?

A. I don't believe I understand the question.

Q. What I mean is—doesn't it, as a corporation, do business with other corporations and have headquarters in every state in the union?

A. Not to my knowledge.

Q. Doesn't it have a business headquarters or organization in Texas?

A. No, not that I know of.

[fol. 24] Q. Is there any establishment in the State of Texas that you know anything about that does any part of the printing that is done?

A. No, sir, I don't.

Q. Is there any place within the State of Texas that you know of where that this literature is assembled in bulk and then distributed to other members of your organization?

A. Through the local organizations that we call Jehovah's witnesses, which is not incorporated, they receive literature in what you might call bulk in order to save transportation and then it is distributed by the local organization of Jehovah's witnesses among the Jehovah's witnesses that they might have sufficient Bibles and literature.

Q. In other words, as I understand, that at each place where there is an organization of Jehovah's witnesses that the literature is sent to them directly and then distributed by them to others. Is that right?

A. Yes.

Q. How long did you say that your organization had been in existence?

A. I don't remember having stated that this morning, but I think it was incorporated back in 1882 or 78, I don't remember.

Q. '78 or '88 somewhere along there?

A. Yes.

Q. One Pastor Russell was the first founder?

A. I stated he was the first president.

Q. First president of the Watch Tower?

A. Yes.

Q. Then Judge Rutherford was the next?

A. After Pastor Russell died, he then became president.

Q. And after his death who was it?

A. N. H. Knorr.

Q. Just three of them is all there has been since the incorporation of the Watch Tower Tract Society or whatever it is?

A. Yes, I have known all three.

Q. Now, let's get on down to the end, you stated that you knew personally Mrs. Daisy Largent, the defendant in this case?

A. Yes.

[fol. 25] Q. When did you first become acquainted with her?

A. In 1937 or '38 at a convention in Houston.

Q. In Houston. At that time was she living in Paris?

A. I don't think she was.

Q. Do you know how long she has been living, connected with your organization in Paris?

A. I don't think it has been over two years, a year and a half perhaps, something like that.

Q. I understood you to state she came here in '38, you thought?

A. No, I didn't. She came her to my knowledge about the first of the year 1941.

Q. About first of year 1941 and do you know where she came from here?

A. I'm not sure about that. Think she came from Little Rock, Arkansas.

Q. Now, Mr. Isaacs, you brought a whole lot of evidence that I don't think is anything to this case, but I let it go in about the connection with foreign powers and the powers with which the United States is at war. You stated over there, I believe, that Hitler suppressed your organization in Germany?

A. That is right.

Q. Was that the only organization to your knowledge that he suppressed in Germany?

A. I don't know the names of others, but I have heard that other organizations were opposed also.

Q. I will ask you if it isn't a fact that the Masonic Order was suppressed in Germany by Hitler?

A. I don't doubt it a minute. My oldest brother is a Past Master of the oldest lodge in Texas and he says that in Germany they have had a dirty deal and certainly would be run out if Hitler and Mussolini had their way.

Q. Now back to the remuneration of those who are distributing this literature. I believe you stated while ago that as to yourself that you were engaged in other occupations besides that of being a minister of this particular organization?

A. From the standpoint like Jesus was a carpenter, from time to time I have done that not to be a burden.

Q. On someone else?

A. Yes.

[fol. 26] Q. Do you have church organizations or is it just an organization that doesn't have any particular place of worship? Does it have any particular segregation of worship in any of these towns and cities?

A. In most of the larger cities and many of the smaller towns they rent good-sized halls in different parts of the city in order to make it convenient for the people and in many places where the congregation is small they meet in homes to study and plan their work of preaching the gospel.

Q. Those who are engaged in that particular line of work what is their remuneration and how are they remunerated for that line of work?

A. Well, the only remuneration that I know of that they get is the satisfaction of worshipping Jehovah God and serving Christ and His Kingdom in proclaiming His Kingdom. Now, if individuals receive help from anybody or someone wants to help them, it is none of my business and I am not acquainted with that.

Q. People have to live and have to have nourishment and drink.

A. You have to eat to keep from dying.

Q. Have to eat to keep from dying—got to eat to live, haven't you?

A. Yes, sir.

Q. Now then where you do all that work free, how do they live?

A. Well, I guess that was a marvel to the Jewish people in Christ's day, how that the Lord and the apostles got around and preached and yet there is a number of records of His taking a fish and feeding a multitude. One can only rely on God.

Q. You have got to have something—you can't maintain an organization wthout some remuneration of some kind, can you, Mr. Isaacs?

A. Of course not. But the question is where the money comes from. I have a family and naturally have to have food and clothing for them and I have a car and have to have gas and tires, If I can get them.

Q. You mean you can't?

A. In my own case it is one of not letting your right hand know about your left, but I want to say to answer your question frankly that one time I started out with $3,000.00 to see how long I could stay in this work. In a few years I had gotten down to $300.00 and my children had gotten larger and were entitled to proper education and all and so I had to work on a few contracts for a while.

Q. In other words, recoup your fortune?

A. Yes.

[fol. 27] Q. You go out and distribute literature with one hand and take in money with the other?

A. What money?

Q. Any money.

A. No sir. The literature is offered to people on voluntary contribution, but I can personally say that I have given away numbers of books and booklets.

Q. I am going to ask you this question—is it not a fact that in the distribution of this literature that you would have some certain small tracts that you gave away, but some others that you didn't give away, but sell?

A. We do not sell anything; but we do offer the literature on a contribution. A bound book, a novel that would ordinarily cost 75¢ to $1.25 we offer to the people on a contribution of 25¢. There is a book called CHILDREN and which has a number of scripture references. That book is offered

on a contribution of 25¢. In addition we give them a booklet of about 64 pages and in addition to that we send three courses with Bible questions to help them understand. In addition we go to homes and assist in back calls and Bible study and seek to encourage them to gain a knowledge of God's Kingdom.

Q. You are down that far. You say that 'upon a contribution', and a contribution only, it is sold?

A. I didn't say that. It is not a sale.

Q. Did you infer it?

A. No sir, I didn't infer it knowingly.

Q. We will go this way then. There is a book that you delivered to anybody that would contribute to you 25¢, in addition to that then you gave all this other literature that you mentioned free, but it all depends upon the contribution that you get for that one little book? That right?

A. No, sir.

Q. What is right?

A. If they offer a contribution of 25¢ we leave that book with them and the booklet HOPE and agree to send them the three study courses of questions to help aid them in Bible study. If they don't offer the contribution of 25¢ and are desirous of reading the book we then leave it or if they offer a 5¢ contribution up to 25¢ we assist them that much and I can truthfully say that in the past twenty-five years I have given away thousands of books bound similar to this.

[fol. 28] Q. But there must be a contribution unless it is gotten from you or the Tract Society which you represent to get that literature into their hands.

A. It is a contribution of what they will offer, 25¢ or less. Those who really want it and can't contribute, get it free. We do not promiscuously scatter it around. People who are able and willing to help by that money contribution can and you can readily see that you could hardly pay for expenses and time and gas and clothes of the individual and naturally they have to live and that is where the burden comes—to see that they provide for themselves.

Q. Is there any assessment of any item or special assembly for the purpose of remuneration for the purpose of the difference in cost and contribution?

A. If I understand your question right—may I ask you do we receive the book free—kindly state that again.

Q. You have, by way of explanation, membership or people, men and women, that belong to your organization of Jehovah's witnesses. Is that right?

A. Yes.

Q. Now many of those are engaged in other avocations, avocations of labor or other than preaching?

A. Yes. As an illustration I might state that my wife keeps the house and my three daughters work and that way we carry on our work.

Q. And there are men and women in your organization that are employed on we will say a weekly or monthly basis, in other words that they receive money for their labor. For instance a man that is a contractor or a carpenter, you go out and make a trade with a man to build a house and you will make profit on your labor, which you will do and now then is there any part of that money or any assessment that is received by anybody that is engaged in an avocation of that kind that is paid into your organization to recompense for you for that loss of that periodical and all that? Suppose that you are employed by some secular organization or religious organization, makes no difference, which pays a salary of $100.00 a month. Now is there any part of that $100.00 that you received tithed by you under some portion of the scriptures a 10% offering or tithe, is there any part of that tithed by you as a member of your organization for the purpose of remuneration for any of the loss sustained by distribution of this literature.

A. No.

[fol. 29] Q. Then how is it paid for?

A. It is paid for in this way. If I find that I have the time and can engage in this house to house work and can give away or place on contribution of 10¢, 15¢ or 25¢ as according to what the prospect cares to contribute up to and not over 25¢. I go to work and get books. It is my property and my business what I do with them.

Q. You pay for books when sent to you?

A. Certainly.

Q. Well, what is the cost of that book right there?

A. That book right there would cost me 20¢ and this booklet 1¢ and the three study courses that we mail out cost postage of 4½¢. At that rate, if I deliver the courses I might save 4½¢, but if I don't, of course, I will lose ½¢.

Q. In other words, if you break even you are doing well?

A. The Lord says if we make a covenant with Him, everything belongs to Him. It is a matter of using it wisely.

Q. The question was asked by your counsel whether or not that members of Jehovah's witnesses are loyal to the United States government of America. Is that right?

A. Yes, we are loyal to the United States of America constitution in every respect where it doesn't conflict with God's law. You stated the United States of America. That included all the states of the United States. We have found that in some states of the United States that they have almost put to shame Hitler in their persecution and disrupting the work of preaching the Word of God. I know that to be a fact because when they drove the brethren out of Louisiana and Mississippi I spent over a week making affidavits and seeking some way to help these people driven like cattle from their homes.

Q. Have you ever received any treatment of that kind in Texas?

A. Yes, in the last World War I did.

Q. Was that because of any act of yours?

A. No sir, it was not and was proven so by the Sheriff of Harris Count and citizens of Harris County.

[fol. 30] Q. Now then how many representatives do you have in Paris?

A. I really don't know.

Q. Do you know how many were engaged in your work directly and not in anything else?

A. Here in Paris; I'm afraid I don't know.

Mr. Baswell: That is all.

Redirect examination:

Mr. Covington: Just this question please. Now the organization has been incorporated since 1876 or '82, but have Jehovah's witnesses been on the earth prior to that?

Mr. Isaacs: According to my understanding, Abel was the first Jehovah's witness when he was slain by his brother, Cain.

Q. How do we know Jehovah's witnesses have been on the earth since that time? How do we know they were Jehovah's witnesses?

A. In the eleventh chapter of Hebrews in the Old Testament it gives you account of many who testified, died violent deaths and were faithful. Moses who was chosen to lead

the children of Israel out of Egypt and how the Lord delivered them out and destroyed Pharaoh's army in the Red Sea. They were all witnesses and looking forward to that city or government.

Q. What do you mean by this city or government advocated?

A. The same thing that Jesus taught his followers to pray for thy kingdom come and thy will be done on earth as it is in heaven, which means Christ's Kingdom established here upon earth with Jesus King of the Theocratic Kingdom, all in subjection to the most high Jehovah.

Q. Will that bring blessings to humanity and when will it come?

A. The Revelator says he saw a new city or government, the new Jerusalem, coming down from God out of heaven and all sickness and sorrow and death *or* gone for the former things have passed away.

Mr. Covington: That is all, thank you.

Mr. Baswell: I believe that is all.

Mr. Covington: Mrs. Largent, will you kindly take the stand please.

Mrs. Daisy Largent, defendant, having been duly sworn, did testify as follows:

Direct examination:

[fol. 31] Mr. Covington: You have been sworn?

Mrs. Largent: Yes.

Q. State your name, your age, your address, how long you have lived in Paris and where you came from here?

A. Name is Daisy Belle Largent, 39 years old, 400 E. Washington in Paris, Texas.

Q. How long have you lived here?

A. Two years this coming March.

Q. And before that?

A. Little Rock, Arkansas.

Q. And how long there?

A. About six months.

Q. And before that?

A. Hot Springs.

Q. And before you went to Hot Springs?

A. Jackson.

Q. How long did you live at Jackson?
A. Off and on for eight years.
Q. Are you married?
A. Yes, a widow.
Q. Any children?
A. Yes, four.
Q. What are their ages?
A. Eighteen, sixteen, fourteen and six.
Q. They live with you?
A. Yes, sir.
Q. Whe did your husband die?
A. January, 1939.
Q. How do you make your living?
A. My husband was a World War Veteran of World War #1 and I draw a small compensation.
Q. Pension from the Government of the United States?
A. Yes, widow's pension.
[fol. 32] Q. And that keeps up yourself and family?
A. Yes.
Q. Now, outside of keeping your family, do you have any other occupation that you carry out?
A. An ordained minister of the Bible.
Q. Do you preach the gospel here in Paris?
A. All the time that I can spare from my family?
Q. How long have you been preaching the Gospel here in Paris?
A. Nearly two years.
Q. Nearly two years. How do you preach the Gospel?
A. I go from door to door and also go on the streets with my magazine bag.
Q. From house to house what do you do there?
A. I go from house to house and also with my magazine bag. I go out and visit the homes and I was arrested for preaching the Gospel without a permit from man. This was the first one on the 19th of April and then on May 9, 1941.
Q. In 1941?
A. I would hold the magazines in one hand and the Kingdom News out and was walking around a block, most of the time by the bank on the south side of the Plaza and would hold the Kingdom news out to the people and if they wanted it they would take it.
Q. Did you charge anything?
A. No, sir, gave it away.

Q. You gave it away. For the purpose of the record, you work with a canvas bag with a strap over the shoulder and which reads on it "The Watchtower" and the sign written "The Watch Tower Explains The Theocratic Government, 5¢ per copy". What does the other side read?

A. Reads Watchtower and Consolation.

Q. Five cents per copy?

A. Yes.

Q. And you was distributing the Watch Tower and Consolation magazines?

A. Yes, sir, and was also carrrying some small books.

[fol. 33] Mr. Covington: I would like to introduce the Watch Tower magazine. Judge, I offer that and will have her explain later.

(Defendant's Exhibit No. 1 above referred to is allowed in evidence and is a magazine consisting of sixteen pages entitled The Watchtower enclosed herein and made a part hereof by reference.)

Q. You were also offering Consolation magazine?

A. Yes.

(Defendant's Exhibit No. 2 above referred to is allowed in evidence and is a magazine consisting of thirty-two pages entitled Consolation enclosed herein and made a part hereof by reference.)

Mr. Covington: Here is a magazine, or rather a pamphlet entitled Kingdom News we would like to offer in evidence and have marked as Defendant's Exhibit No. 3.

(Defendant's Exhibit No. 3 above referred to is allowed in evidence and is a leaflet of two pages entitled Kingdom News No. 7 enclosed herein and made a part hereof by reference.)

Q. Mrs. Largent when you went from house to house—you say you preach from house to house? You heard the testimony of Mr. Isaacs who testified as to how this work is done and is that how you would testify if those questions were asked you?

A. Yes.

Q. Explain what literature you used from house to house.

A. Combination of three books, bound books, and these are the three that I remember, also I had some others but don't remember which.

Q. The point is you were calling from house to house with them, one entitled "Deliverance", "Government" and "Enemies" and you were offering those to the people?

A. Yes, three bound books for 35¢.

Q. Three bound books for 35¢ and what do they cost you?

A. Twenty cents apiece.

Q. That is what you pay to the local organization?

A. Yes.

(Defendant's Exhibit No. 4 above referred to is allowed in evidence and is a bound book of 379 pages entitled Enemies enclosed herein and made a part hereof by reference.)

[fol. 34] Mr. Baswell: They cost you 20¢ and you sold them three for 35¢.

Mr. Covington: You lost on that transaction. When you lose on these transactions do you take it out of your pension from the Government?

A. I certainly do.

(Defendant's Exhibit No. 5 above referred to is allowed in evidence and is a bound book of 363 pages entitled Government enclosed herein and made a part hereof by reference.)

(Defendant's Exhibit No. 6 above referred to is allowed in evidence and is a bound book of 379 pages entitled Deliverance enclosed herein and made a part hereof by reference.)

Q. Do you use this book from house to house?

A. Yes.

Q. Explain to the Court how you present that to the people and what it costs, what is contributed and what you receive and what you do?

A. I tell them it is a Bible help, it explains, it is just a text book referring to the Bible and it teaches them to understand the Bible and also to be real American people and as the Bible Says "Train up a child in the way it should go and when it is old it will not depart from it. I tell them when I place the book all about all this.

Q. Do you give the book?

A. Give the booklet "Hope" with the offer.

Q. The booklet "Hope" is offered with that?

A. As a premium.

Q. If they take the book what do you do?
A. Send them little study courses.
Q. What does the postage cost?
A. Four and a half cents.
Q. What does the booklet "Hope" cost?
A. One cent.
Q. Do you ever give away any of the books free?
A. Two this month.
Q. During the year 1941 was it your practice to give away literature?
A. Certainly was and where they were unable from some reason to take it and contribute and wanted to read I did. [fol. 35] Mr. Covington: The defendant offers booklet "Hope" as Exhibit No. 8, which witness says was offered as premium with bound book entitled "Children" and we offer also bound book and ask that it be marked as Defendant's Exhibit #7 and with exhibit #7 you gave the Exhibit #8, known as "Hope" and after they take it you mail the study courses that cost you 4½¢ postage?
A. Yes.

(Defendant's Exhibit #7 above referred to is allowed in evidence and is a bound book of 381 pages entitled "CHILDREN" enclosed herein and made a part hereof by reference)

(Defendant's Exhibit #8 above referred to is allowed in evidence and is a booklet of 62 pages entitled HOPE enclosed herein and made a part hereof by reference)

Q. Do you make profit out of this preaching activity and explain that please.
A. Well, the world calls it loss, but in God's sight I am gaining.
Q. Why do you preach the Gospel in this way?
A. Because the spirit of the Lord God is upon me to preach. In Isaiah 61:1 and 2 "The Spirit of the Lord God is upon me; because the Lord hath annointed me to preach good tidings unto the meek; he hath sent me to bind up the broken hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; To proclaim the acceptable year of the Lord, and the day of vengeance of our God; to comfort all that mourn;".
Q. In Isaiah 61:1 and 2. May I ask you, please, if you have any earthly credentials showing that you are an ordained minister of the Watch Tower?

A. Yes, I do, right here.

Q. And this is the card that you presented to people, or one like this?

A. One like this, same thing and this on the back the same thing.

Q. I understand. And this was presented to the people to introduce the book and this is your credentials? This was presented at peoples' homes as you met them?

A. Yes.

[fol. 36] (Defendant's Exhibit #9 above referred to is allowed in evidence and is a card of ordination from the Watch Tower Bible & Tract Society signed by N. H. Knorr, President and Daisy Largent, 400 E. Washington, Paris, Texas, enclosed herein and made a part hereof by reference)

Q. Mrs. Largent, how many times have you been arrested?

A. Four times.

Q. How long have you spent in jail each time?

A. First time ten days in city jail and thirteen days in County jail and next time from first evening to next and the next time 96 hours.

Q. Ninety six hours. Your case in all those have been appealed to this court or some other court?

A. County court.

Q. First one to District Court but all others to the County Court.

A. Yes.

Q. Has your son, Archie, ever been arrested.

A. He's been taken up and arrested five times in this town and charged twice.

Q. Have you brought your children up to follow in the same way you follow?

A. Yes, my greatest responsibility is to do that.

Q. Mrs. Largent, did you know that there was an ordinance in the City of Paris forbidding your work?

A. Just hadn't thought about it had to do this work and didn't think until I was arrested and they told me.

Q. After that they told you you would be arrested and you were you continued?

A. Yes.

Q. Why didn't you quit?

A. To stop doing the work God has commanded would be breaking my covenant.

Q. Is that your idea?

A. Jesus says 'he that taketh a warning saveth his own soul'. In several places in the third chapter and 18th and 19th——

Q. Of what—Ezekiel?

A. Ezekiel and Jeremiah and many others telling what the Lord says.

Q. Any other commands?

A. Matthew 24:14 says "This Gospel must be preached to all the world for a witness and then shall the end come".

[fol. 37] Q. Do you believe that?

A. Yes, I do.

Q. Any other commands?

A. Can't bow down to no man.

Q. Why didn't you discontinue when the authorities told you?

A. Acts 5:29 when the apostles were before courts same as I am today they said that with all boldness they would speak his word and 1 Peter 2:21 says "for even hereunto were ye called; because Christ also suffered for us leaving us an example, that ye should follow his steps".

Q. Are you surprised that you were arrested?

A. No, sir, if it had not come I would have thought something was wrong because the Bible says we will be hated of all nations for His Name's sake.

Q. That's all through the New Testament?

A. Yes.

Q. Do you believe the Bible?

A. Yes.

Q. Do you desire to continue to preach this Gospel here as long as you remain here?

A. Yes.

Q. Did you have those other books there you have before you, did you have those?

A. Yes.

Q. This booklet entitled *God and the State, Judge Rutherford Uncovers the Fifth Column* and *Loyalty*. What use did you make of those books?

A. I always carry those with me to present to the people. Especially since 1941 it has been that lots of things have been said against us and I couldn't afford to engage in con-

versation on the street, so when one desired I gave it to him and told him to read that to have his questions answered.

Q. You mean this booklet *God and the State* you offered as explanation of what you stand for?

A. To prove that we are not subversive.

Q. You offered that to anybody that questioned you to prove your loyalty?

A. Rather than take up time on the streets.

Q. Also from home to home?

A. Yes.

[fol. 38] (Defendant's Exhibit No. 10 above referred to is allowed in evidence and is a booklet consisting of 32 pages entitled GOD AND THE STATE which is enclosed herein and is made a part hereof by reference)

Q. The booklet "Loyalty" you offered that to anyone on the question of saluting the flag?

A. Yes.

Q. For explanation?

A. To show how a Christian has to stand from the Bible.

Q. This booklet here, use that?

A. To explain why so much mob violence.

(Defendant's Exhibit No. 11 above referred to is allowed in evidence and is a booklet consisting of 32 pages entitled LOYALTY which is enclosed herein and made a part hereof by reference)

(Defendant's Exhibit No. 12 above referred to is allowed in evidence and is a booklet consisting of 32 pages entitled JUDGE RUTHERFORD UNCOVERS FIFTH COLUMN which is enclosed herein and made a part hereof by reference)

Q. Why didn't you go to the Mayor and ask for a permit for this work if you knew it was required?

A. It would be an insult for me to ask man for a permit to do what Jehovah God, my father, commands me to do.

Q. Any command or authority for that in God's law?

A. Yes, sir. In Exodus 20 "Thou shalt not make unto thee any graven image or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth: Thou shalt not bow down thyself to them, nor serve them: for I the Lord thy God am a jealous God, visiting the iniquity of the fathers upon the

children unto the third and fourth generation of them that hate me;".

Mr. Baswell: What portion of the Scriptures is that?

Q. What book?

A. Exodus 20:4-5 and there is others.

Q. Mrs. Largent, do you use these books with the Bible in explaining these things?

A. Yes.

Q. Do you conduct studies?

A. I do.

[fol. 39] Q. Do you receive any money of compensation for that?

A. No, sir. All voluntary. I gladly do that to serve Jehovah.

Q. How long have you been one of Jehovah's witnesses?

A. Nearly four years.

Q. How long did you study prior to that? Study the literature preparing for this work?

A. Twenty years, I would say.

Q. Twenty years?

A. I was rather young, but I had studied.

Mr. Covington: Those exhibits, Defendant's exhibits from one to twelve are in evidence. We have offered them and I assume that they are in evidence.

Judge: Harrell: Yes and we will recess for a few minutes.

Cross-examination.

Mr. Baswell:

Q. Mrs. Largent, how old did you say you are?

A. Thirty-nine.

Q. Thirty-nine years old. And are you a native of Texas?

A. Native of Alabama.

Q. Alabama. How long have you been in Texas.

A. About eighteen years, off and on. My husband's health was bad.

Q. Where were you when he passed away?

A. Jacksonville, Texas.

Q. You stated you lived in Little Rock prior to that?

A. Yes.

Q. Er ~~ge~~ge in this work there?

A. Yes.

Q. How come you to leave Little Rock and come to Texas?

A. I just naturally liked Texas.

Q. Isn't it a fact that while you were in Little Rock they told you that they were going to arrest you if you didn't get out of town? and you left?

A. I stayed until I was free.

Q. How many times were you arrested in Little Rock?

A. One charge.

Q. You came from there to Paris, Texas?

A. Yes.

[fol. 40] Q. And you have been here how long?

A. First of March will be here two years.

Q. You believe in obeying the laws of the State of Texas and of the United States?

A. As long as they don't conflict with God's law.

Q. Do you believe that the laws that are governing the State of Texas and the United States are good laws?

A. Yes sir, when they don't try to make people violate God's law——

Judge Harrell: Answer the question only.

Q. Do you believe that the laws of the State and the United States should be enforced?

A. Yes, I never was arrested until I became a Christian.

Q. Very law-abiding until you became a Christian?

A. Yes.

Q. Since then you have flaunted the law?

A. No. There is nothing wrong with the City Ordinance, but as applied to a Christian it is wrong.

Q. Then a man that is a sinner is in bad shape with the law?

A. Christians obey God's law in the Bible and obey all man's laws that don't conflict with God's, but where man and God conflict I have to obey God.

Q. Your attitude is this—that the laws are made for those people who are not Christians and those who are Christians are persecuted and arrested, those that are not persecuted don't come in?

A. No, in Almighty God's sight——

Q. I'm asking you if that is your attitude in this matter?

A. I obey all laws that don't conflict with God's law and I'm willing to do it. I don't have to be forced.

Q. You say you have been charged in the City of Paris four times. Were you ever talked to and admonished by the officers of the city to comply with the ordinance of the City that was in effect at that time before they ever arrested you.

A. They told me that would arrest me, but I can't listen to man I have to listen to Almighty God.

Q. What is wrong with going to the Mayor and getting a permit, which you could have done?

[fol. 41] A. That would be asking man to do what Almighty God has said I have to do and it would mean my everlasting destruction.

Q. You read a passage of scripture from the old testament.

A. I read some from the Old and from the New.

Q. Some from the Old Testament?

A. Yes.

Q. Do you believe the Old Testament is part of the Bible and should be lived up to?

A. Yes.

Q. Do you believe the old Mosaiac law was a good law?

A. Well, parts of it is made for a phototype of what was coming to pass.

Q. Mrs. Largent, isn't it a fact that you can take the Bible and pick out many portions to prove anything?

A. No, sir, if you are honest, you can't. He said that those were wrote for a schoolmaster for us.

Q. That doesn't have anything to do with it. You believe in being loyal?

A. Yes.

Q. Are you loyal to the Government of the State of Texas?

A. Yes.

Q. Believe in loyalty to all the laws?

A. As long as they are good laws.

Q. Do you believe in loyalty?

A. Loyalty, yes. And here is a book that——

Q. If you do, why, when they requested you kindly and nicely to go to the Mayor and get a permit why didn't you and go on about your preaching?

A. I just told you that that would mean my everlasting destruction to ask man to do what God commands me to do. And the Apostle Paul said in Acts 5:29, when that was what they was trying to get them to do "we ought to obey God

rather than man" and "whether it be right in the sight of God to hearken unto you more than unto God, judge ye" and that is why He said "ye shall be hated of all nations for my names' sake".

Q. That is the attitude there and that is the situation, that you have now with reference to all the laws and all the government and everything else. No laws man made are any good.

A. All earthly laws are man-made and God is the su-
[fol. 42] preme judge and he is above everything else.

Q. Let's don't argue about that. You just stated while ago in being loyal to the laws that are in force?

A. As long as they are just laws and don't ask me to do something that God says I can't do.

Q. Did God tell you that you didn't have to go down and get a permit?

A. Told me if I did that I was not obeying Him.

Q. Oh, he did?

A. In the Scriptures.

Q. When did he tell you that?

A. When I got an understanding from a study of the scriptures. He says "woe is me if I preach not the Gospel".

Q. He told you then, in the Bible, to disobey the ordinance of the City of Paris with reference to the license in the avocation which you were pursuing? Is that right?

A. I will read you a Scripture when I find it in just a minute.

Q. Who picked those out?

A. I picked them out and I have just had the headache for over a month and can't think very well.

Q. Did it give you a headache when they put you in jail?

A. I was expecting that.

Q. You were expecting that is the reason why you didn't obey the laws of the City of Paris. You expected to be arrested, defied the ordinance and the officers?

A. I didn't know I would be arrested. There is lots of towns who love justice and I didn't know I was going to be arrested no more than I knew it in Little Rock. I knew it wasn't from anything I would do that I would be arrested but just because I preached the Gospel.

Q. They gave you an opportunity to pursue your avocation by just merely complying with just a little ordinance that asked for a permit.

A. As our Bill of Rights says "no man or group of men can make a law that will take away our freedom to worship God like we want" and it be a good law.

Q. You are talking about man's orders—who wrote the Scriptures?

A. The Holy prophets, Apostles and God directed them to write and, of course, He directed Christ Jesus to teach [fol. 43] His followers and that is the way from Almighty God and that is what we follow.

Q. How many versions of the Bible are there?

A. Several, I can't name them. Majority of the people use the King James.

Q. Who was King James?

A. He was an Apostle.

Q. So that is the King James version and that is the Bible that you are quoting to this court to justify your not taking at least five minutes of your time to go down and get a permit?

A. You don't believe in the Bible?

Q. How do you know I don't.

A. You don't show you do.

Q. I am not going to argue, but I want you to answer my question with reference to filing for a permit and you don't have to quote Scripture.

Judge Harrell: Mrs. Largent, you must answer the question please, yes or no.

A. No, I can't answer.

Mr. Baswell: That is all.

Redirect examination.

Mr. Covington;

Q. You say you are one of the parties that got the injunction in Little Rock?

A. Yes in 1940 in Little Rock.

Q. In Federal Court?

A. Yes.

Q. Against enforcement of an ordinance?

A. Yes. May I say this Judge——

Judge Harrell: Let him ask questions and you answer.

Q. Will you please tell me whether or not at any time you called at the homes of anybody in Paris and they were offensive or antagonistic?

A. At all homes I was in friendly conversation.

Q. Tell us of instance on this arrest, what you were doing? With anyone?

A. I had met a good-will person who was nice and she was asking about things and we were talking.

Q. Ask you to come in?

A. Yes and I was inside with my back to the door.

[fol. 44] Q. Tell what happened?

A. Officer Taylor came to the door and we heard some call and I thought, and she thought, too, that he was calling for the lady of the house and he told her that he wanted me and then Officer Taylor asked me what I was doing and I told him I was preaching the Gospel and offered him the literature and asked him to read some of it and he told me that he would be afraid to and I would have to come with him. I asked if I was under arrest and he said, yes, come with him. I asked for credentials to show he was an officer because he didn't have a uniform on.

Q. If anyone is not interested in the books you were distributing did you try to force them to take them?

A. I thanked them for their time and turned around and left.

Q. Did you ever have an argument because they wouldn't listen?

A. No, sir. I have no time to spend arguing to people.

Recross-examination.

Mr. Baswell: How come Officer Taylor to come down where you were?

A. Someone called him. It wasn't the lady of the house or none of her family. I had been going from door to door.

Q. What right did you have to question his authority as an officer?

A. Not any except I did think he should show me his badge and that as an American citizen I should know whether he was an officer or not before I went with him.

Q. You stated because he was not in uniform that you asked him that?

A. Yes.

Q. Did you know a uniform was part of the ordinance of the city of Paris? It might be that he was complying with the ordinance?

A. I just told you that I have nothing against the ordinance. We have to have law and order.

Q. Now then, Mrs. Largent, I believe you stated you would offer for sale——

A. No, sir.

Q. We meant that you would offer for sale, that you would offer for sale those magazines offered by your attorney as exhibits:

A. If they came along and offered me 5¢ and if they wanted to read it I would give it to them.

[fol. 45] Q. You gave it to who?

A. I don't know them by name.

Q. How many did you give away?

A. It would be hard to try to count, an average of three magazines a week.

Q. Gave away three magazines a week. How many did you average selling?

A. I think when I was arrested that I had gotten contributions for one magazine.

Q. You don't call it a sale, you call it a contribution?

A. Yes.

Q. You go down here to a store and see an article advertised for 5¢, you don't have to buy it?

A. They certainly wouldn't give it to me.

Q. Suppose they did just make you a present, they would be doing the same thing you would, advertising their wares for sale and if you didn't buy it if they wanted to give it it would advertise for them.

A. Mine is a Christian and a charitable work.

Q. We've got to get down to the legal part of this thing. You say you didn't know why the officer came down?

A. Not at the time.

Q. Know whether he had any other business?

A. At the time of my trial it showed some man called him to have me arrested.

Q. What was his name?

A. He runs a radio shop. His name has slipped my mind.

Q. Radio shop where?

A. Don't know just where it was.

Q. What street was it on?

A. Don't know.

Q. Don't know?

A. It is on record. It is hard to remember over a year.

Q. Hard to remember?

A. Over a year.

Q. You remember very distinctly that you were arrested four times for violating this ordinance?

A. Yes.

[fol. 46] Q. How many times were you warned?

A. Don't remember.

Q. Who warned you?

A. An officer on the street told me that I could put them out in the cars and in the stores but not on the streets.

Q. Do you know Jack Reeves?

A. Not at that time.

Q. Did Jack Reeves ever talk to you?

A. He told me if I didn't quit my work I would be arrested.

Q. Did he put it to you that way?

A. He left God's laws out of it.

Q. Did he ask you to abide by the ordinance?

A. He said they would keep arresting me as long as I kept working.

Q. Did he ever say anything to you before he arrested you?

A. Mr. Reeves was not the Chief of police.

Q. When was you first arrested?

A. Chief Walters was chief.

Q. Mr. Walters ever told this to you?

A. He got mad at me.

Q. Did you get mad at him?

A. No, sir. I am not angry with any individual. I have tried to explain why I have to do this work.

Q. Ever have conversation with any officials prior to arrest?

A. No.

Q. Never ask you to get a permit?

A. No.

Q. Never told you you would have to have a permit to go on with your avocation of selling?

A. No.

Q. That is what you were doing?

A. I was giving them away.

Q. Taking what they would give you and told them what you wanted?

A. They would say 'I wish I had one of those' and I would let them have it.

Q. But when you went out with those books and pamphlets you got the 25¢ for these?

[fol. 47] A. If they asked me what I wanted I said that they could contribute a Nickel or any amount you have to offer.

Q. Contribute?

A. Yes.

Q. When they didn't care to contribute did you leave books?

A. When they wished to read and wanted them I did.

Q. Go back and pick them up again?

A. Seldom ever. Some times they offer them back, but seldom ever get any back.

Q. Give them to someone else, somebody able to read and be instructed?

A. The majority give them themselves so I don't have to.

Q. Now, Mrs. Largent, you have told us all you know about this case and what led up to it?

A. I have. You might have some more.

Q. If it was a fact that Grover Taylor talked to you before he arrested you and told you to get a permit, why didn't you?

A. Suppose he did, but any way as I explained, I could not get one.

Q. You told him you wouldn't do it?

A. I told him I couldn't do it.

Q. You couldn't?

A. I have to obey the higher powers, which are Almighty God and Christ Jesus.

Q. You obey those in preferance to any laws of the United States, State of Texas or any other state?

A. I can't submit to man-made laws instead of God's.

Q. What about the Constitution, is that man-made?

A. It was written by Christian men and as near right as men could make it and I would like to see that government last until Christ's begins, but in Mississippi it hasn't and in some towns.

Q. The Constitution is man-made, what you are getting behind and that you are endeavoring to invoke is a man-made instrument.

A. They followed God's law in that the men wrote into it that God's law is supreme and that in no manner could this ordinance down freedom of speech or the press.

[fol. 48] Q. Where does it down freedom of speech and press when they ask you to just get a permit?

A. If they force me to ask for that, isn't that a forced issue instead of a free one?

Q. Alright then, wasn't the Constitution a sort of forced issue?

A. They wrote into that Constitution that God would be above everything else.

Q. No other?

A. For law-breakers, but I am not a criminal. I am here because I am law-abiding.

Q. Law-abiding because you have broken the laws of the City of Paris?

A. No the laws of the Constitution and Jehovah God.

Q. Do you know you have not violated the laws of the Constitution?

A. I know that I have not.

Mr. Covington: That is the defendant's case, your Honor, we rest.

Mr. Baswell: The State will ask for Mr. Grover Taylor to get on the Witness stand.

Grover Taylor, witness for plaintiff, having been duly sworn, did testify as follows:

Direct examination:

Mr. Baswell: Your name is Grover Taylor?

A. Yes.

Q. You are City Pahrolman?

A. Yes.

Q. You were city patrolman on or about the first of June, 1941?

A. Yes.

Q. Who was City Marshall at that time?

A. Jack Reeves.

Q. Do you know Mrs. Daisy Largent?

A. Yes.

Q. Where did you first become acquainted with her?

A. Knew Mrs. Largent here on the streets for some time.

Q. Had you seen her on the streets prior to June 11th, 1941?

A. Yes, I had seen her.

[fol. 49] Q. Had any conversation with her?

A. Can't call to mind.

Q. Remember the day you arrested her?

A. Don't remember. Remember the occasion.

Q. What was the occasion of your being down theres at that particular time and where? Remember whose home it was?

A. It was on Brown Avenue.

Q. To refresh your memory, was it Mrs. H. J. Bayes?

A. Yes.

Qfl What was the occasion of your being down there at

A. Someone called the police and said soneone was putting out literature and to pick them up becausse they didn't have any permit.

Q. Did you have any conversation about the permit?

A. I asked if she had a permit.

Q. Did she say she didn't have one.

A. Yes.

Q. Was there any request made by you at that time with reference to getting a permit?

A. Can't say was or wasn't.

Q. What did she say to you with reference to a permit?

A. Said she didn't have one.

Q. Didn't have?

A. No.

Q. Did she tell you she wasn't going to get one?

A. Said she didn't have to have a permit, she told me that.

Q. Do you know whether or not that she had ever been warned with reference to distribution of literature before arrested?

A. Well, I don't know, but seems like she had been told before that she would have to get one. Not sure, but she had been warned. Reeves warned her.

Q. You know Walters?

A. Yes.

Q. Was he Chief of Police or City Marshal?

A. Yes.

Q. Do you know whether or not she had been warned during Mr. Walter's administration?

[fol. 50] A. No, I wasn't working at that time.

Mr. Covington: We have no questions.

Mr. Baswell: State rests.

Mr. Covington: The defendant rests and we close our case at this time.

* * * * * * *

Testimony Closed Here

* * * * * * *

ORDER OVERRULING MOTION FOR JUDGMENT

Mr. Covington: The defendant wishes to file a motion at the close of this case for a Judgment of Acquittal and finding of Not Guilty.

(The defendant at this point filed a motion for a Judgment of Acquittal and Finding of Not Guilty, which was argued by Counsel and at the conclusion of argument overruled by Court. Exception taken and allowed.)

* * * Mr. Covington Argument * * * *.

* * * Mr. Baswell * * * Argument * * *

—I want these people to have their day in the higher courts and let the higher courts pass on this matter and that should be no reflection on this court because the Court of Criminal Appeals has held many ordinances unconstitutional; but before they will have the right to appeal to the Court of Criminal Appeals, the fine has to be over and above $100.00 and I suggest this Court to fix the fine in any amount in the judgement of the Court so that they will have the right to apeal to the Court of Criminal Appeals.

HONORABLE JUDGE HARRELL * * * DECISION

Mrs. Largent, being a church worker myself, I believe in freedom of the press, freedom of speech, and religious liberties as much as *nay* person in the earth. If you had applied to the city for a permit and they had refused to give you a permit to carry on your work, you could have come into this Court with a better case. You have my sympathy and I trust that the higher court, the court of appeals at Washington, will give you the right you long for. This Court will have to sustain the lower court in this case. Guilty—$100.00 fine and costs.

Mr. Covington: But Judge, that is not enough to permit us to take the case to the Court of Criminal Appeals, the fine must be more than $100.00 to allow that.

Judge Harrell: The judgement is going to stand at $100.00 and costs.

Mr. Williams: Note our exception to the ruling of the Court.

[fol. 51] STIPULATIONS

It is agreed and stipulated between counsel for the State and Counsel for the Defendant that there is now pending on the docket of the County Court of Lamar County, Texas, eleven other cases involving the same offense and covered by the same ordinance as the case at bar and that said offenses are alleged to have been committed by a number of other members of the organization of Jehovah's witnesses and it is agreed and stipulated that these cases shall be continued from day to day and from term to term pending the final disposition of this case in the Supreme Court of the United States.

J. M. Braswell, Attorney for the State; Hayden C. Covington, Tom S. Williams, Attorneys for the Defendants.

Approved and ordered to be filed as a part of the record in this cause, this 9 day of November A. D. 1942.

Eugene F. Harrell, County Judge, Lamar County, Texas.

[fol. 52] Reporter's Certificate to foregoing transcript omitted in printing.

AGREEMENT AS TO STATEMENT OF FACTS

* * * * * * *

We, the undersigned, counsel for plaintiff and defendant, respectively, hereby agree that the above and foregoing is a true and correct statement of all the material facts adduced in evidence upon the trial of Cause No. 2200-B, styled State of Texas vs. Daisy Largent, tried in the County Court of Lamar County, Texas, at the November, Term, 1942, thereof.

J. M. Braswell, Attorney for Plaintiff; Hayden C. Covington, Tom S. Williams, Attorneys for Defendant Daisy Largent.

ORDER APPROVING STATEMENT OF FACTS

The above and foregoing having been examined, I hereby approve the same as a true and correct statement of all the material facts adduced in evidence upon the trial of Cause No. 2200-B, State of Texas vs. Daisy Largent, tried in the County Court of Lamar County, Texas, at the November Term, 1942, thereof.

Eugene F. Harrell, Judge, County Court, Lamar County, Texas.

[fol. 53-54] Clerk's Certificate to foregoing statement of facts omitted in printing.

[fol. 55] IN COUNTY COURT OF LAMAR COUNTY, TEXAS

No. 2200 B

THE STATE OF TEXAS

versus

DAISY LARGENT

FINAL JUDGMENT OF CONVICTION—November 2, 1942

On the 2nd day of November, 1942, came on to be heard the above entitled and numbered cause and came the State of Texas by her County Attorney and the defendant in person and by her attorneys, and both sides announced ready for trial. It appears that this is an appeal from the Corporation Court of Paris, Texas and that this court has jurisdiction of the appeal and the subject matter of this case. Thereupon the defendant expressly waived a jury and pleaded not guilty.

The Court having heard the complaint read, the defendant's plea of not guilty thereto; the evidence and argument of counsel, is of the opinion that the defendant is Guilty, and assess her punishment at a fine of One Hundred Dollars ($100.00) and costs incurred in this case.

It is therefore Ordered, Adjudged and Decreed by the Court that the defendant, Daisy Largent, be remanded to the Custody of the Sheriff of Lamar County, Texas; and that she remain there until all of said fine of $100.00 and

costs have been paid, to which action and judgment of the court defendant duly excepted in open court and gave notice of her intention to take an appeal to the United States Supreme Court at Washington, D. C.

Done at Paris, Lamar County, Texas, on this the 2nd day of November, A. D. 1942.

Eugene F. Harrell, Judge of the County Court of Lamar County, Texas.

[fol. 55a] In County Court of Lamar County, Texas

[Title omitted]

Petition for appeal, Statement, Assignments of Error and Prayer for Reversal—Filed November 9, 1942

Petition for Appeal

Considering herself aggrieved by the final decision of the County Court of Lamar County, Texas, in the above entitled cause, the appellant herein, Daisy Largent, hereby prays that an appeal be allowed to the Supreme Court of the United States herein, and for an order allowing same and fixing the amount of the bond thereon.

Statement

This case is one in which the validity of state legislation is drawn in question to-wit, an ordinance of the city of Paris, Texas, known as Ordinance No. 612, reading as follows:

An ordinance regulating the soliciting of orders for books, wares, merchandise of household articles of any character whatsoever and the sale of books, wares, merchandise or household articles of any character whatsoever, the canvassing and census taking in the residence district of the City of Paris, providing for the issuance of a permit by the Mayor prescribing penalties and declaring an emergency.

Be It Ordained by the City Council of the City of Paris:

Section 1:—

From and after the passage of this ordinance it shall be unlawful for any person, firm or corporation to solicit or-

ders for books, wares, merchandise or any household article of any description whatsoever within the residence portion of the City of Paris, or to sell books, wares, merchandise or any household article of any description whatsoever within the residence district of the City of Paris, or to canvass, take census without first filing an application in writing with the Mayor and obtaining a permit, which said application shall state the character of the goods, wares or merchandise intended to be sold or the nature of the canvass to be made, or the census to be taken, and by what authority. The application shall also state the name of the party desiring the permit, his permanent street address and number while in the city and if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation.

[fol. 55b] Section 2:—

The issuance of such permit by the Mayor shall not confer upon the holder thereof any rights to enter any residence contrary to the wishes of the owner or occupant of same and the holder of any such permit shall be respectful and considerate in dealing with the occupants of the residences and on complaint of any person this permit may be revoked and cancelled by the Mayor.

Section 3:—

The issuance of this permit shall not be held to confer any right on the holder thereof to peddle or sell merchandise without first obtaining a peddler's license and paying the fee therefor.

Section 4:—

Any person, firm or corporation violating any or all of the provisions of this ordinance or who attempts to solicity for the sale of books, wares, merchandise or any household article whatsoever or to sell any of the same or to canvass or to take census within the residence district of the City of Paris without first obtaining a permit from the Mayor shall be deemed guilty of a misdemeanor and on conviction thereof in Corporation Court, be fined in any sum not less than $5.00 or more than $200.00.

Any person having a permit to solicit, sell canvass or take census within the residence district of the City of Paris who shall become abusive or act in an over-bearing or insulting manner to any of the occupants or owners of the residences within said City shall be deemed guilty of a misdemeanor and on a conviction thereof in Corporation Court be fined in any sum not less than $5.00 or more than $200.00.

The fact that the housewives and occupants of residences within the City of Paris are annoyed and harassed by indiscriminate canvassing, census taking, etc., and that there is no ordinance at present covering same, creates a public emergency, requiring that the rules and charter provisions prohibiting the passage of an ordinance at the meeting introduced requiring same to be submitted to a committee, be suspended and the same is accordingly done and this ordinance will take effect from and after the date of its approval by the Mayor.

Adopted 11/26/17.
Ayes 4—Nays 0.

Said ordinance was duly passed and approved by the City Council by the City of Paris and was in force and effect at the time of the offense alleged in the complaint. Said ordinance is drawn in question upon the ground that it is repugnant to the First and Fourteenth Amendments to the United States Constitution. The County Court of Lamar County, Texas, is the court of last resort in this cause in the State of Texas in which a decision of that court could be had and the decision of that court is in favor of the validity of said ordinance.

[fol. 55c] The County Court of Lamar County, Texas, became the court of last resort in this cause by reason of the fact that this criminal action originated in the Corporation Court of the City of Paris and was duly appealed to the County Court of Lamar County where the cause was tried on appeal *de novo*, and the fine assessed against the appellant did not exceed the sum of $100.00. Under Article 53 of the Code of Criminal Procedure in such circumstances an appeal cannot be had to the Court of Criminal Appeals of Texas, the highest appellate court of criminal cases in Texas, and said judgment is final.

Therefore in accordance with the rules of the Supreme Court of the United States (Rule 46, paragraph 2) and 28 U. S. C. sec. 344 and 354 and Section 237 (a) of the Judicial

Code, the appellant respectfully shows this Court that the case is one in which, under the legislation in force when the Act of January 31, 1928 (45 Stat. L. 54) was passed, to wit, under Section 237 (a) of the Judicial Code (28 U. S. C., s. 344), a review could be had in the Supreme Court of the United States on a writ of error as a matter of right.

The County Court of Lamar County, Texas, court of last resort in this cause, rendered its decision and final judgment herein on the 2nd day of November, 1942 and the same has been duly entered of record.

Assignments of Error

Now comes the appellant in the above cause and files herewith, together with his petition for appeal, these assignments of error and says that there are errors committed by the court below in the record and proceedings of the above entitled cause, and for the purpose of having the same reviewed in the United States Supreme Court, makes the following assignments:

[fol. 55d] First. The County Court committed reversible error in failing to hold that said ordinance is void on its face because it is in excess of the police power of the State of Texas or the City of Paris and the means employed have no reasonable relation to the police powers of the city or state nor do the ends aimed at by the ordinance justify the means employed by the ordinance, therefore it is unreasonable and deprives defendant of her property and liberty without due process of law and equal protection of the law, al contrary to the Constitution of the United States, Fourteenth Amendment, Section 1.

Second. The County Court committed reversible error in failing to hold that said ordinance is void on its face because by its terms it expressly abridges the people's inherent and unalienable rights of freedom of communication, freedom of speech and of press, all contrary to the First and Fourteenth Amendments to the United States Constitution.

Third. The County Court committed reversible error in failing to hold that said ordinance is unconstitutional and void as construed and applied to the facts and circumstances developed in the evidence because it abridges the defendant-appellant of her rights of freedoms of assembly, speech,

press, and her right to worship Almighty God Jehovah by serving as His ordained minister preaching the Gospel of God's Kingdom, all of which rights are denied contrary to the First and Fourteenth Amendments to the United States Constitution.

Fourth. The County Court committed reversible error, in failing to hold that the ordinance was void on its face because it confers arbitrary and discriminatory powers upon mayor of the City of Paris in that there is no instruction or limitation upon the exercise of his unlimited discretion conferred in the Mayor to grant or refuse permits that may be issued under the ordinance. Therefore it denies defendant appellant of her liberty and property without due process of law and equal protection of the laws contrary to the Constitution of Texas and the Fourteenth Amendment to [fols. 55e-70] the United States Constitution.

Fifth. The County Court committed reversible error in overruling appellant's motion to quash the complaint.

Sixth. The County Court committed reversible error in overruling appellant's motion for a finding of not guilty and for a judgment of acquittal.

Seventh. The County Court committed reversible error in rendering and entering judgment against appellant.

Prayer for Reversal

For and on account of the above errors, the appellant, Daisy Largent, prays that the said judgment of the County Court of Lamar County, Texas, hereinbefore described in the above entitled cause be reviewed by the Supreme Court of the United States and reversed, and a judgment rendered in favor of appellant and for her costs.

Hayden C. Covington, Attorney for Appellant, 117 Adams Street, Brooklyn, New York. Tom S. Williams, Sterling Building, Sulphur Springs, Texas, Attorneys for Appellant.

[fol. 71] Citation in usual form showing service on Appellee, filed Nov. 9, 1942, omitted in printing.

[fol. 72] IN COUNTY COURT OF LAMAR COUNTY, TEXAS

[Title omitted]

ORDER ALLOWING APPEAL—Filed November 9, 1942

Appellant, Daisy Largent, in the above entitled suit and cause has prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgement made and rendered by the County Court of Lamar County, Texas on November 2, 1942 and duly entered of record in the Criminal Minutes of this court.

It appearing that the appellant in her motions and argument of counsel made in her behalf in this cause attacked the ordinance in question on the grounds, as contended by her, that it was void on its face and in excess of the police power and because it conferred arbitrary and discriminatory power upon the Mayor of Paris and is unreasonable and that as construed and applied it was violative of the fundamental freedoms guaranteed and secured by the First and Fourteenth Amendments to the United States Constitution and for those reasons violated the Constitution of the United States. All of these contentions were overruled by the decision and judgment of this court rendered herein.

It appearing that appellant has presented and filed her petition for appeal to the Supreme Court of the United States, a statement, assignments of error and prayer for reversal and jurisdictional statement, all within three (3) months from date of said final judgment of the County Court, the court of last resort in Texas under which a decision can be had in this cause, pursuant to the statutes and rules of the Surpeme Court of the United States in such case made and provided,

[fols. 73-79] It is Now Here Ordered that an appeal be and the same is hereby allowed to the Supreme Court of the United States from the judgment of the County Court of Lamar County, Texas, in the aforesaid cause as provided by law, and

It is Further Ordered that the Clerk of the County Court of Lamar County, Texas, shall prepare and certify a transcript of the record, stipulation of the evidence together with all exhibits in their original form incorporated by reference, the proceedings and judgment in the said cause and transmit the same to the Supreme Court of the United

States so that he shall have the same in said Court within twenty (20) days from this date.

And it is Further Ordered that a bond on appeal for appearance and costs on appeal be fixed in the sum of Five Hundred Dollars ($500.00) and appellant having presented an undertaking conditioned as required by law in the sum of Five Hundred Dollars ($500.00) executed by good and sufficient sureties, it is further ordered that such undertaking or bond be and the same is hereby approved and ordered filed.

It is Further Ordered that the issuance of capias profine be stayed pending a final disposition of this appeal and until the return of the mandate from the United States Supreme Court.

Done at Paris, Lamar County, Texas, on this the 9 day of November, A. D. 1942.

Eugene F. Harrell, Judge of County Court of Lamar County, Texas.

[fol. 80] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 81] Supreme Court of the United States

Statement of Points Relied On—Filed December 1, 1942

Comes now appellant, Daisy Largent, in the above entitled cause and states that the points upon which she intends to rely in the Supreme Court of the United States in this cause are as follows:

Point 1. The ordinance in question, both on its face and as construed and applied to appellant, is violative of the federal constitution in that it abridges appellant's freedoms of speech, of press and of worship of Almighty God according to the dictates of her conscience and as commanded by Jehovah God, all contrary to the First and Fourteenth Amendments to the United States Constitution.

Point 2. The ordinance in question is void upon its face because by its terms it is in excess of the police power of the State of Texas and the City of Paris and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for nor the police

powers of the state and by reason thereof it violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

Point 2. The ordinance is void on its face because it confers arbitrary and discriminatory powers upon the mayor of the city of Paris in that there is no instruction or limitation upon the exercise of his unlimited discretion conferred in the Mayor to grant or refuse permits that may be issued under the ordinance. Therefore it denies defendant appellant of her liberty and property without due process of law and equal protection of the laws contrary to the Constitution of Texas and the Fourteenth Amendment to the United States Constitution.

[fol. 82] For the above reasons the judgment of the Lamar County Court of Texas should be reversed.

Hayden C. Covington, 117 Adams Street, Brooklyn, New York; Tom S. Williams, Sterling Building, Sulphur Springs, Texas, Attorneys for Appellant.

[fol. 82a] [File endorsement omitted.]

[fol. 83] UNITED STATES SUPREME COURT

DESIGNATION OF PARTS OF THE RECORD TO BE PRINTED—Filed December 17, 1942

To the Clerk of the Supreme Court of the United States:

You will please print each of the documents designated below, contained in the above captioned case now on file with your office, forwarded to you by the Clerk of the County Court of Lamar County, Texas, to wit:

1. The complaint and all other papers from the Corporation Court filed in the said County Court.
2. Docket entries of the County Court.
3. Motion to quash the complaint filed in the County Court.
4. Order overruling the motion to quash.
5. Motion for Judgment of Acquittal and finding of Not Guilty.
6. Order of the County Court overruling motion for judgment.

7. Reporter's Statement of Facts containing the evidence.
8. Judgment of Conviction.
9. Petition for allowance of appeal to the Supreme Court [fol. 84] of the United States, Statement, Assignments of Error and Prayer for Reversal.
10. Citation signed by the Judge of the County Court.
11. Order allowing appeal to the Supreme Court.
12. Statement of Points to be relied upon.

Dated, December 16, 1942.

Hayden C. Covington, Attorney for Appellant.

PROOF OF SERVICE

STATE OF NEW YORK,
County of Kings, ss:

Hayden C. Covington, being sworn, says that he is attorney for appellant in the above entitled cause; that he served a copy of the within Designation of Parts of the Record to be Printed on appellee's counsel by depositing said copy, securely enclosed in a sealed wrapper addressed to the County Attorney for Lamar County, Paris, Texas, and with postage fully prepaid therefor, in a United States Post Office at the City of New York on the date hereinafter written.

Hayden C. Covington.

Sworn to and subscribed before me this 16th day of December, 1942. William K. Jackson, Notary Public. Notary Public Kings County. Kings Co. Clks. No. 73, Reg. No. 3005. Commission expires March 30, 1943. (Seal.)

[fol. 84a] [File endorsement omitted.]

[fol. 85] SUPREME COURT OF THE UNITED STATES

ORDER POSTPONING FURTHER CONSIDERATION OF THE QUESTION OF JURISDICTION—December 21, 1942

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the argu-

ment on the merits. Counsel are requested to discuss in their briefs and on the oral argument whether under the law and practice of Texas the judgment can be fully reviewed on this record by a higher state court by habeas corpus or other proceedings.

Endorsed on cover: File No. 47,060. Texas County Court, Lamar County. Term No. 559. Daisy Largent, Appellant, vs. The State of Texas. Filed December 1, 1942. Term No. 559, O. T. 1942.

(4140)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. 559

DAISY LARGENT,

Appellant,

vs.

STATE OF TEXAS.

APPEAL FROM THE COUNTY COURT OF LAMAR COUNTY, TEXAS.

STATEMENT AS TO JURISDICTION.

HAYDEN C. COVINGTON,
TOM S. WILLIAMS,
Counsel for Appellant.

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STATE OF TEXAS,

Appellee,

vs.

DAISY LARGENT,

Appellant.

APPEAL TO THE SUPREME COURT OF THE UNITED STATES.

JURISDICTIONAL STATEMENT.

In compliance with Rule 12 (1) of the Supreme Court of the United States, as Amended April 6, 1942, appellant files her statement disclosing the basis upon which she contends that the Supreme Court of the United States has jurisdiction upon appeal to review the judgment in question.

Statutory Provisions Sustaining Jurisdiction.

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code or 28 U. S. C. 344 (a).

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statute could be received as a matter of right on writ of error. This case presents a state of facts within the jurisdiction of this court.

Texas Legislation Drawn in Question.

The legislation, the constitutionality and validity of which is here drawn in question is an ordinance of the City of Paris, Texas, known as Ordinance 612 reading in part as follows:

"Section 1:

"From and after the passage of this ordinance it shall be unlawful for any person, firm or corporation to solicit orders for books, wares, merchandise or any household article of any description whatsoever within the residence portion of the City of Paris, or to sell books, wares, merchandise or any household article of any description whatsoever within the residence district of the city of Paris, or to "canvass, take census without first filing an application in writing with the Mayor and obtaining a permit, which said application shall state the character of the goods, wares or merchandise intended to be sold or the nature of the canvass to be made, or the census to be taken, and by what authority. The application shall also state the name of the party desiring the permit, his permanent street address and number while in the city and if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation.

Section 2:

The issuance of such permit by the Mayor shall not confer upon the holder thereof any rights to enter any residence contrary to the wishes of the owner or occupant of same and the holder of any such permit shall be respectful and considerate in dealing with the occupants of the residences and on complaint of any person this permit may be revoked and canceled by the Mayor.

Section 3:

The issuance of this permit shall not be held to confer any right on the holder thereof to peddle or sell merchandise without first obtaining a peddlers license and paying the fee therefor.

Section 4:

Any person, firm or corporation violating any or all of the provisions of this ordinance or who attempts to solicit for the sale of books, wares, merchandise or any household article whatsoever or to sell any of the same or to canvass or to take census within the residence district of the City of Paris without first obtaining a permit from the Mayor shall be deemed guilty of a misdemeanor and on conviction thereof in Corporation Court, be fined in any sum not less than $5.00 or more than $200.00.

The entire of the above ordinance appears in the record (S. F. 2; R. 10).

The County Court of Lamar County, Texas, the highest court of Texas in which a decision can be obtained in this cause, held that the ordinance was valid and constitutional and that it did not abridge appellant's rights of free speech, free press and her freedom to worship and serve Almighty God according to the dictates of her conscience and as commanded by Him. Said County Court also held that said ordinance was not unconstitutional because unreasonable and in excess of the police powers of the state and city contrary to the fourteenth amendment. The court also refused to hold that the ordinance conferred arbitrary and discrimnatory power in the Mayor contrary to the fourteenth amendment to the United States Constitution. That court of last resort of the State of Texas sustained the application of the ordinance to appellant and decided in favor of the validity of the same under the federal constitution

and held that it was constitutional on its face and as construed and applied.

County Court of Lamar County is Court of Last Resort.

Appellant was fined only $100.00 and costs by the County Court on appeal from the Corporation Court of Paris, Texas. The County Court was advised by both parties that in event of a decision adverse to appellant they desired a fine be assessed so as to confer jurisdiction in the Court of Criminal Appeals. The ordinance allowed a fine in excess of $100.00 and costs but the trial court refused to render such a judgment as to permit further appeal by appellant to a higher court in Texas. Article 53 of the Code of Criminal Procedure for Texas, 1925, provides that the Court of Criminal Appeals of Texas does not have jurisdiction of an appeal from a judgment rendered by the County Court on trial *de novo* on appeal from a Corporation or Justice Court where the fine assessed in the County Court does not exceed the sum of $100.00 and costs. Other articles of the Code of Criminal Procedure confers exclusive appellate jurisdiction of misdemeanor offenses tried in the County Court where the fine does not exceed $100.00 and costs on trial *de novo* in the County Court. *Ex parte Largent*, 162 S. W. (2d) 419. The County Court of Lamar County is the court of last resort and the highest court in the State of Texas in which a decision could be had in this cause, although said County Court is not the highest criminal court of appeals in the state. This Court has so held in other cases. *Thomas* v. *Rabb*, 267 U. S. 564; *Bacon* v. *Texas*, 163 U. S. 207; *Sullivan* v. *Texas*, 207 U. S. 416, and *S. A. & A. P. R. Co.* v. *Wagner*, 241 U. S. 476.

Timeliness.

The judgment of the County Court assessing a fine of $100.00 and costs was rendered and entered on the 2nd day of November, A. D. 1942 (R. 55). The judgment of the County Court of Lamar County, Texas, is now a final judgment. This petition for appeal is duly presented and filed within three months from the date of such final judgment and is therefore timely as required by law.

Statement of Nature of Case and Rulings of Court.

The rulings of the County Court of Lamar County are such as to bring this case within the jurisdictional provisions relied on above.

Appellant is a citizen of the United States of America and is native born. She is a widow of a veteran of the first *world war* and depends entirely for her support and maintenance upon a pension received from the federal government. From the modest allowance thus received she maintains a home and cares for several minor children. Although she is one of Jehovah's witnesses and engages in preaching the gospel from house to house in the City of Paris by means of distributing literature she does not receive any income or profit therefor but contributes part of her allowance to such work by giving away free of charge many books and booklets explaining the Bible and by distributing books at less than contributions received by her for them (S. F. 23, R. 31).

She is an ordained minister of Jehovah God and a duly authorized representative of the Watch Tower Bible & Tract Society, a charitable, non-profit corporation organized under the religious corporation laws of Pennsylvania with main office at Brooklyn, New York. Appellant pos-

sesses credentials attesting to the fact that she is a duly ordained minister of Jehovah God and a representative of said charitable corporation.

Appellant is in a covenant with Jehovah God to preach the Gospel of the Kingdom or Theocracy under Christ Jesus by following in his footsteps and those of the apostles by calling from house to house and presenting the gospel message in printed form so that the people might read and study the same in the quiet of their homes and learn the way to life everlasting in peace and happiness. She believes that she must continue in such preaching activity until the "cities are desolate and without inhabitant". She cannot apply for or obtain a permit because to do so would be an act of disobedience to Jehovah God and an insult to His commandment that 'This gospel must be preached in all the world for a witness and then shall the end come' (Matthew 24:14). She said concerning the provision of the ordinance requiring a permit that she must "Obey God rather than men" (Acts 5:29; Acts 4:19). She further said that she did not apply for a permit because the constitution of the United States exempted a minister from the requirement of submitting to the censorship of city officials before preaching the gospel. The evidence shows that in addition to the scriptural command of preaching from house to house there is a practical reason for thus preaching. That the great majority of residents in the United States do not attend *Church* of any kind on Sunday or other days. That therefore the only place to contact the people so as to reach the greater number is in the homes of the people. Appellant said that if she failed or refused to carry the message of the Kingdom and the warning concerning the near approach of the "Battle of Armageddon" and thus enable all people of good will towards Almighty God to obtain a means of

escape from such disaster and to life everlasting because of *fear of man* or the ordinance in question that she would suffer literal everlasting destruction at the hands of Almighty God Jehovah for failing to 'warn the wicked to turn from their wicked way' (Ezekiel 3:18-19; 33:8-9). Therefore she has no alternative except to continue to preach from house to house without first obtaining a permit from the Mayor of Paris.

The undisputed evidence is that appellant went from house to house in the city and approached each home in an orderly and proper manner by knocking at the door or ringing the doorbell. If anyone came to the door she presented her "testimony card" which explained the purpose of her call. If the householder was interested she exhibited the book CHILDREN and the booklet HOPE and advised that they could be obtained and delivered then and there by appellant if the householder would promise to read and study them. The one thus obtaining the book and booklet was afforded an opportunity of contributing to aid in further publication of the literature the sum of twenty-five cents. If the person could not contribute 25 cents a less sum was accepted and if too poor to contribute any amount whatsoever the book and booklets were left without charge or contribution.

The undisputed evidence shows that appellant does not profit from any contributions received because it costs 20 cents to print the book and 1 cent to print the booklet. That with each set of book and booklet distributed the appellant mailed a series of three study courses through the mails to the recipient that cost the appellant the sum of 4½ cents postage and for which appellant did not receive any additional compensation. Appellant also testified that she gave away many books and booklets without any contribution each month and that her preaching ac-

tivity was therefore carried on at a loss and without profit whatsoever.

The evidence is undisputed that appellant did not act offensively or annoy or argue with any householder whom she met and that she did not attempt force or actually force herself or her message upon anyone who was not willing to listen or receive the literature. If any householder said that they were not interested or did not want the literature she quietly passed on to the next house.

The literature thus distributed by the appellant did not relate to any commercial object or venture but pertains solely to explanation of Bible prophecies and shows how they are being fulfilled in modern times for the guidance and direction of people of good will towards God who love righteousness. The contents points out that the rapid advance of dictatorial-totalitarian governments is under the direction of Satan the Devil for the purpose of turning all mankind against Jehovah God and to destroy those who refuse to violate their covenant with Almighty God to proclaim the Theocracy or God's kingdom as the only hope from the *abomination of desolation*. Such circumstance is foretold as one of the strongest pieces of circumstantial evidence that the Battle of Armageddon is near at hand which will result in the destruction of all wicked totalitarian governments together with all political, ecclesiastical, and commercial elements of the Devil's organization and all persons supporting same against God's Kingdom under Christ Jesus.

The evidence shows the primary aim of the appellant is not to *only* distribute literature but in addition to bringing to attention of all persons the above message she establishes Bible studies, free of charge and without any contributions, in the homes of the people who obtain the literature, read it and desire to learn more concerning God's kingdom.

The above statement of facts appears in the evidence adduced on the trial (S. F. 1-42; —).

Corporation Court Proceedings.

Appellant was charged by complaint in the Corporation Court of Paris, Texas, with an alleged violation of the above described ordinance because she did not have a permit required thereby (R. 2). Among other things the Complaint charged that the defendant-appellant sold books from house to house in the residential district without applying for or obtaining a permit required by the said ordinance (S. F. 1; R. 2). Upon trial in the Corporation Court appellant urged a motion to quash on the grounds the ordinance was unconstitutional (R. 3). The appellant was found guilty as charged in the complaint filed in the corporation court and duly appealed from the judgment of said court by filing a bond (S. F. 3-5; R. 2A-2B).

County Court of Lamar County Proceedings.

The trial in the County Court of Lamar County was *de novo* and evidence was given entire anew (S. F. 1-42; R. 9-50). In the time and manner required by law appellant duly filed her motion to quash the complaint in which appellant attacked the ordinance because it was unreasonable, arbitrary and in excess of the police power, provided for the unlimited exercise of arbitrary discretion on the part of the Mayor and also on its face and as construed and applied because it abridges appellant's rights of freedoms of speech, press and of worship of Almighty God according to the dictates of conscience contrary to the First and Fourteenth Amendments to the United States Constitution (R. 3). The motion was overruled and appellant excepted (R. 4). A final judgment convicting the appellant was rendered and entered by the County Court

and thereby appellant was fined $100.00 and costs (R. 55). Before the court rendered the judgment and at the close of all the evidence the appellant duly filed and presented her motion for a judgment and a finding of not guilty for and on account of each of the above reasons urged in the motion to quash. The motion for a judgment was denied and appellant excepted (R. 5-7). In open court and in the manner required by law the appellant excepted to the final judgment and gave notice of appeal to the United States Supreme Court (R. 55).

The County Court of Lamar County, as well as the Corporation Court, duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and said court held it valid and constitutional, both on its face and as applied and held that the First and Fourteenth Amendments to the United States Constitution had not been violated in applying the ordinance to the activity of appellant.

In the petition for appeal and the assignments of error filed with this jurisdictional statement, appellant complains of the judgment of the County Court of Lamar County, Texas, for and on account of each of the grounds set forth in her motions to quash and for a judgment of acquittal filed in said court.

Grounds and Decisions Sustaining Appellate Jurisdiction of the United States Supreme Court and Showing Federal Questions Involved on Appeal.

FIRST.

The ordinance in question, both on its face and as construed and applied to appellant, is violative of the federal constitution in that it abridges appellant's freedoms of speech, of press and of worship of Almighty God according

to the dictates of her conscience and as commanded by Jehovah God, all contrary to the First and Fourteenth Amendments to the United States Constitution.

SECOND.

The ordinance in question is void upon its face because by its terms it is in excess of the police power of the State of Texas and the City of Paris and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for nor the police powers of the state and by reason thereof it violates the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.

THIRD.

The ordinance is void on its face and as applied because it confers arbitrary and discriminatory powers upon the mayor of the city of Paris in that there is no instruction or limitation upon the exercise of his unlimited discretion conferred in the Mayor to grant or refuse permits that may be issued under the ordinance. Therefore it denies defendant appellant of her liberty and property without due process of law and equal protection of the laws contrary to the Constitution of Texas and the Fourteenth Amendment to the United States Constitution.

Discussion.

The failure on the part of the County Court to assess a fine in excess of $100.00 and costs makes the County Court of Lamar County the highest court in the state of Texas in which a decision can be had and the court of last resort in this particular case. The case was *de novo* on appeal from the corporation court of the city of Paris and according to the provisions of Article 53 of the Code of Criminal

Procedure of Texas the Court of Criminal Appeals does not have power and jurisdiction to review this conviction on appeal. This court has repeatedly held that it will take jurisdiction on appeal directly from trial courts and intermediary appellate courts of the state where by rule or statute the higher or highest appellate courts do not have power to review the convictions. See *Thomas* v. *Rabb*, 287 U. S. 564, where an appeal was noted: "probable jurisdiction" and in which the order allowing the appeal was signed by the County Judge of Rains County, Texas. See also *Bacon* v. *Texas*, 163 U. S. 207, and *Sullivan* v. *Texas*, 207 U. S. 416, 422.

The ordinance on its face imposes censorship of the press and of speech equally vicious as the ancient censorship of the press that prevailed in England and later in some of the colonies prior to the revolution. See *Near* v. *Minnesota*, 283 U. S. 697. A similar ordinance providing for the issuance of a permit from the City Manager of the City of Griffin, Georgia, as a condition precedent to the right to distribute literature in the city was held to be void on its face and unconstitutional by this Court in the case of *Lovell* v. *Griffin*, 303 U. S. 444. There this Court said: "Whatever the motion which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship." The Town of Irvington ordinance provided that no person could canvass, solicit or distribute circulars, or other matter or call from house to house "without first having reported to and received a written permit from the Chief of Police". There the court held that the most effective instruments in the dissemination of information and opinion were pamphlets and that the most effective and proper way of distributing them with the people is "at the homes of the people". The ordinance was declared

invalid because it provided for and allowed unconstitutional censorship of the freedom of the press and speech. See *Schneider* v. *State*, 308 U. S. 147. The ordinance in question is not unlike the ordinance declared by this Court to be unconstitutional in the *Schneider* case, *supra*. We submit that the provisions of the ordinance here is substantially the same as that statute of the State of Connecticut declared invalid because providing for prior censorship of the exercise of freedom to worship Almighty God in the case of *Cantwell* v. *Connecticut*, 310 U. S. 296. The ordinance is also similar to that held invalid by the Supreme Court of Florida in the case of *State, ex rel. Hough* v. *Woodruff*, 2 So. (2nd) 577. See also an opinion by the same court in the case of *State, ex rel. Wilson* v. *Russell*, 1 So. (2nd) 569. Reference is here made to *Borchert, et al.*, v. *Ranger*, 32 Fed. Supp. 577. See also the case of *Village of South Holland* v. *Stein*, 373 Ill. 472, by the Supreme Court of Illinois where the village of South Holland made it unlawful for anyone to canvass for orders of goods, etc., or solicit or sell merchandise from house to house without obtaining a solicitor's permit from the village board. The Supreme Court of Illinois held that the conviction violated the State and Federal constitutions. In the recent decision of this Court, *Jones* v. *Opelika*, 62 S. Ct. 1231, this Court says: "In dealing with these delicate adjustments this Court denies any place to administrative censorship of ideas or capricious approvel of distributors. * * * In *Lovell* v. *Griffin*, 303 U. S. 444, we held invalid a statute which placed the grant of a license within the discretion of the licensing authority. By this discretion, the right to obtain a license was made an empty right. Therefore the formality of going through an application was naturally not deemed a prerequisite to insistence on a constitutional right."

The ordinance is admittedly not regulatory because one who obtains the permit is entitled to go about the town at all hours and call at all places in the residential section without interference from the licensing authority or the city of Paris. The means employed by the city of Paris to interfere with the exercise of a constitutional right must yield to the stronger provisions of the Federal Constitution guaranteeing the freedoms here claimed to be abridged. *Jay Burns Baking Co.* v. *Bryan*, 264 U. S. 504; Freund's "The Police Power," p. 133, s. 143; *Herndon* v. *Lowry*, 301 U. S. 242; *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152-153; and *Schneider* v. *State, supra.*

It cannot be reasonably argued that because the appellant received money contributions to help partially defray the cost of publication of the literature that she can be required to obtain a permit. To hold to such a doctrine would mean the end of constitutional liberties in this country and would leave the exercise of the four freedoms only to those who are of the *well-to-do* and ultra-rich class who can give away literature free or afford more exclusive means of dissemination of information, such as the radio and the public press, etc.

For the above reasons we submit that the County Court of Lamar County has committed fundamental error and ruled directly contrary to controlling decisions of this Court, and has so far departed from the usual and customary course and path of constitutional law as to require the Supreme Court of the United States to exercise its power to correct the same in these proceedings.

Conclusion.

For sake of brevity, reference is here made to petition for appeal filed in this cause, with which we incorporate, by such reference, each and every assignment of error

therein contained and hereby make the same a part hereof to show that substantial questions were presented to the County Court of Lamar County, Texas.

WHEREFORE the Supreme Court of the United States should note jurisdiction of this cause for final hearing in accordance with the rules of this Court, because the courts below disposed of important Federal questions in a way that is in conflict with applicable decisions of this Court and have so radically and far departed from the Constitution of the United States and the accepted and regular course of the judicial procedure of American courts as to call for this Court's power of supervision to halt the same.

Confidently and respectfully submitted,

HAYDEN C. COVINGTON,
117 Adams Street,
Brooklyn, New York;
TOM S. WILLIAMS,
Sterling Building,
Sulphur Springs, Texas,
Attorneys for Appellant.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1942

No. 559

■

DAISY LARGENT, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

■

APPEAL FROM THE COUNTY COURT OF LAMAR COUNTY, TEXAS

APPELLANT'S BRIEF

HAYDEN C. COVINGTON
Attorney for Appellant

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SUPREME COURT OF THE UNITED STATES

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No. 559

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DAISY LARGENT, *Appellant*

v.

THE STATE OF TEXAS, *Appellee*

■

APPEAL FROM THE COUNTY COURT OF LAMAR COUNTY, TEXAS

APPELLANT'S BRIEF

Opinions Below

There was no opinion written and there is none reported by the court below in this case.

Jurisdiction

Jurisdiction of the Supreme Court of the United States is invoked under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)].

Under the Act of Congress of January 31, 1928, Chapter 14, 45 Stat. 54, and under the Act of Congress of April 26, 1928, Chapter 440, 45 Stat. 466, an appeal may be taken in any case which under prior statutes could be received as a matter of right on writ of error.

Timeliness

The judgment of the state court of last resort in this controversy was rendered on November 2, 1942. (R. 49) The judgment of said highest court in which a decision could be had in the controversy became final on such date. The time for taking an appeal from such judgment expires February 2, 1943. The appeal is taken within such time.

County Court is the Court of Last Resort in This Cause

This cause was tried de novo in the County Court of Lamar County, Texas, and the fine assessed was $100 and costs. (R. 49, 52) Article 53 of the Code of Criminal Procedure of Texas denies further appeal to the Court of Criminal Appeals of Texas from a judgment in a case of this kind unless the fine imposed *exceeds* $100 and costs.

Therefore the trial court was the highest court in Texas in which a decision could be had in this controversy. *Schneider* v. *State*, 308 U. S. 147, 154; *Edwards* v. *California*, 314 U. S. 160, 171-172; *Kentucky* v. *Powers*, 201 U. S. 1, 37-39; *Grovey* v. *Townsend*, 295 U. S. 45.

The Statute

The legislation, the constitutionality and validity of which as construed and applied to appellant is here drawn in question, is an ordinance of the City of Paris, known as Ordinance No. 612 which reads as follows:

> "Section 1: From and after the passage of this ordinance it shall be unlawful for any person, firm or corporation to solicit orders for books, wares, merchandise or any household article of any description whatsoever within the residence portion of the City

of Paris, or to sell books, wares, merchandise or any household article of any description whatsoever within the residence district of the City of Paris, or to canvass, take census without first filing an application in writing with the Mayor and obtaining a permit, which said application shall state the character of the goods, wares or merchandise intended to be sold or the nature of the canvass to be made, or the census to be taken, and by what authority. The application shall also state the name of the party desiring the permit, his permanent street address and number while in the city and if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation.

"Section 2: The issuance of such permit by the Mayor shall not confer upon the holder thereof any rights to enter any residence contrary to the wishes of the owner or occupant of same and the holder of any such permit shall be respectful and considerate in dealing with the occupants of the residences and on complaint of any person this permit may be revoked and canceled by the Mayor.

"Section 3: The issuance of this permit shall not be held to confer any right on the holder thereof to peddle or sell merchandise without first obtaining a peddlers license and paying the fee therefor.

"Section 4: Any person, firm or corporation violating any or all of the provisions of this ordinance or who attempts to solicit for the sale of books, wares, merchandise or any household article whatsoever or to sell any of the same or to canvass or to take census within the residence district of the City of Paris without first obtaining a permit from the Mayor shall be

deemed guilty of a misdemeanor and on conviction thereof in Corporation Court, be fined in any sum not less than $5.00 or more than $200.00."

The entire text of the above ordinance appears in the record. R. 8-10, 50-52.

Statement

Appellant is a native citizen of the United States of America. (R. 36) She is a widow of a veteran of the first *world war* and for her and her four children's support and maintenance she depends entirely upon a pension received from the federal government. (R. 29) From the modest allowance thus received she maintains a home and cares for several minor children. R. 29.

Appellant is an ordained minister of Jehovah God and duly authorized representative of the Watchtower Bible and Tract Society, a charitable corporation organized under the New York membership corporations law. The sole business of the corporation is to preach the gospel of God's kingdom by printing and distributing literature containing printed sermons on Bible subjects relating to present-day world events. Such work is carried on throughout the entire earth. The corporation makes and distributes to its representatives and ordained ministers the books, pamphlets and literature at *less than cost price* and operates on a yearly deficit which is taken care of by voluntary contributions of its members. Such Society is used by Jehovah's witnesses to carry on their work in an organized and orderly manner. Such Society directs the work of the defendant, who was sent by it to preach throughout the entire city of Paris. R. 18, 33.

Appellant is ordained or authorized as a minister primarily by Jehovah God according to the Scriptures. Isaiah 61:1, 2 is relied on, to wit, "The spirit of Jehovah

God is upon me; because Jehovah hath anointed me to preach good tidings unto the meek; he hath sent me to bind up the broken-hearted, to proclaim liberty to the captives, and the opening of the prison to them that are bound; to proclaim the acceptable year of Jehovah, and the day of vengeance of our God; to comfort all that mourn." The Watchtower Society issues to its authorized agents, ordained ministers of Jehovah God, a certificate of identification and ordination (Exhibit 9, R. 33) proving that it is the Scriptural duty of each to preach in the manner Christ Jesus and His apostles did. Acts 20:20 is cited on the card, and says: "And how I have taught you publicly, and from house to house." Also Mark 16:15, which says: "Go ye into all the world and preach the gospel to every creature." Mark 6:6, which states: "And he went round about the villages, teaching." Luke 8:1, stating: "And it came to pass afterward, that he went throughout every city and village, preaching and shewing the glad tidings of the kingdom of God; and the twelve were with him." Matthew 10:7, 12: "And as ye go, preach, saying, The kingdom of heaven is at hand. And when ye come into an house, salute it." R. 33, 34, 38.

Jehovah's witnesses get their name from Jehovah God as given them through the Scriptures: "Ye are my witnesses, saith the Lord, that I am God." (Isaiah 43:10, 12) See also Isaiah 44:8. Jesus said: "For this cause came I into the world, that I should bear witness unto the truth. Every one that is of the truth heareth my voice." Jehovah's witnesses and all true followers of Christ must do likewise and go from house to house and teach publicly as commanded in 1 Peter 2:9, 21. R. 33, 34.

Every person who is in a covenant with Jehovah is duty-bound to obey the law of Almighty God which requires that he follow in the footsteps of His Son, Christ Jesus. (Psalm 40:8; 1 Peter 2:9, 21) Jesus Christ said: "Go ye into all the world, and preach the gospel to every creature." (Mark 16:15) It is written that He taught pub-

licly in the market places, upon the streets and from house to house, as did also His apostles. (Mark 6:6; Luke 8:1; 13:26; Acts 20:20; Proverbs 1:20, 21) A minister of the gospel who follows in the footsteps of Christ Jesus must be a witness for Jehovah, the Almighty God.—Isaiah 43:10-12; 44:8. R. 27, 38, 34-35.

The form of preaching today by the "recognized" religious clergy is much different from that outlined in the Bible. Large cathedrals and so-called "churches" have been set up throughout all the countries of the world, to which places the preachers ask their congregations to come so that the clergy might talk to them. This is a change from the method employed by Jesus and His apostles, as aforesaid. They did not build temples of stone, but rather went from place to place and preached wherever they had opportunity. It is true the apostles came together and met in an upper room to study with the Lord Jesus when in Jerusalem. The society, assembly or congregation formed after Christ's resurrection came together in halls or some meeting place or at homes and studied the written Word of God. But all of these were commissioned by the Lord Jesus to preach the gospel of God's Kingdom publicly and from house to house, as set out in the above scriptures. While Jehovah's witnesses have and use auditoriums and other public assembly places, inviting the public to attend and hear important speeches, they also have regular meeting halls and homes in which they gather and invite the people to come for careful study of the Bible. At the same time each individual claiming to be a servant and witness for the Most High goes from place to place about each city and village proclaiming the message of the Kingdom, so that those who have not heard may have the opportunity of hearing. R. 11-18, 29-36.

The record shows that this is not only the scriptural method of preaching but the most practical method of reaching all the people; that the religious census establishes that the vast majority of people in the United States

do not belong to a "church" or do not attend religious services of any kind; that, for various reasons, it is impossible to persuade all the people to attend the religious institutions to listen to sermons of the clergy; that Jehovah's witnesses do not expect to get all the people to attend their meeting places; therefore Jehovah's witnesses must take the message to the people in their homes so that each and every person may have the opportunity of receiving same. R. 15-18, 31-34.

Although she is one of Jehovah's witnesses and engages in preaching the gospel from house to house in the City of Paris by means of distributing literature, appellant by so doing does not derive any income or pecuniary profit but even contributes part of her own allowance to such work by giving away free of charge many books and booklets explaining the Bible and by distributing books which cost more than the equivalent of contributions she receives toward the work. R. 17-19, 22, 24-27, 29-34.

The record fails to show that appellant made a profit or sold anything to anybody in Paris, Texas. On one occasion during a special campaign she distributed three bound books of 375 pages each, entitled respectively *Deliverance, Government* and *Enemies*, each costing twenty cents to publish, and she received contributions totaling thirty-five cents. (R. 31) The record shows that on other occasions she distributed the literature and because the people did not offer her contributions she placed the greater part of the literature distributed without any contribution or at a total monetary loss to her. R. 32.

At the time of her arrest and trial no evidence whatever was offered or introduced showing that appellant was engaged in a commercial venture. (R. 14-45) When arrested by officer Taylor she was at the home of a friendly person who was interested in the literature and the Bible. The officer came into the home and arrested her without a complaint or request from the lady of the house. R. 41, 45-46.

The record establishes the fact that the city officials

have persecuted this poor appellant and her son and other of Jehovah's witnesses by arresting them constantly under this and other unconstitutional ordinances. Appellant has spent 27 days in jail all told, without an adjudication of her rights or a discharge of the sentences imposed against her. R. 33, 47-48.

Appellant's principal and primary object in carrying on said work was that she wanted to be of service to humanity by bringing to them the Word of God by distributing the literature, which is her way of worship. This she did without any motive for selfish pecuniary return. R. 32, 43-45.

When appellant came to a house, if anyone came to the door he was told that she represented the Watchtower Bible & Tract Society as one of Jehovah's witnesses. The person was told that it was desired to present a very important message of "The Kingdom" by means of a recorded phonograph talk. If the person permitted, the message was presented. (R. 16, 18, 29, 31-35) It described the book entitled *Children* (Appellant's Exh. 7) as containing a message relating to present-day current world events. All Bible testimony and the physical facts show that the rule of wickedness is about to come to a complete end and that such will be followed by a rule of righteousness. God has now made it possible for those who desire good things to learn just how and when such righteous rule will come into full control. Those great and comforting truths found in the Bible are set forth in a book recently published, and which book is entitled "Children". That book contains instructions for all who would be the children and subjects of the great Lord and King, Christ Jesus. Both the parents and their children find in that book the facts that will bring joy to them now and which truths now make the immediate future appear very bright. Those truths enable readers to understand, learn how to become children of the higher powers, the Almighty God and Christ Jesus, and how they may dwell and enjoy life under the righteous powers for ever. While the name of the book is "Children", it is

for parents and children as well. It shows how the parents can bring up their children in the right way and how the parents and children can at all times be of mutual benefit to each other. R. 31-32.

At the conclusion of the playing of the record the book *Children* was presented to the householder for examination and offered to him. If the person called on desired to have the book he could and was given the opportunity to contribute twenty-five cents toward the benevolent work done by appellant. (R. 28-29) Should the person contribute twenty-five cents or any less sum a booklet entitled *Hope* (R. 32, Appellant's Exhibit 8) was given without additional contribution. Sometimes if the person did not have any money but expressed a desire to have the book it was left free of charge. In every instance if householder did not have the money the booklet *Hope* was left on whatever contribution could be made, usually the cost of the booklet, but if they had no money to contribute it was left free upon condition that it be studied. R. 25, 31-33.

Appellant did not force herself upon the people nor did she play the phonograph record at homes where the people objected or did not consent to listen. If the person called on did not want to hear the phonograph but was interested appellant always presented the *testimony card*, which took the place of the introduction by phonograph, and explained the work and the purpose of the visit, including a brief description of the book *Children*. If the person was not interested, appellant would pass on quietly to the next house. Appellant never provoked an argument or controversy with another because of his religious views. R. 32-33, 41, 44.

The books and pamphlets are used by appellant as a substitute for oral sermons. When left they can be studied by the people in the quiet of their homes along with their Bible. This way saves the time of the preacher as well as that of the householder and enables the one receiving the literature to study it carefully with the Bible. R. 31, 15-18, 25.

An examination of the books and booklets shows that they relate exclusively to a plain and simple explanation of Bible prophecies. They show how the prophetic dramas recorded in the Bible are now being fulfilled and how they relate to current events and present-day world conditions. The names of some plainly show that they relate to an analysis or discussion of such present events under the critical and searching light of the recorded Word of God. The literature shows that the present-day conflict between the nations is foretold in the Bible together with the result thereof. Present-day events are cited as circumstantial evidence of the near establishment of God's kingdom, The Theocracy, on earth, as mankind's only hope for relief from the suffering that is sure to come with the devastating scourge of totalitarian aggression now overrunning the earth. It points out clearly that before that kingdom is completely established Jehovah, the Almighty God, will destroy Satan and his organization and present-day governments, consisting of political, commercial and ecclesiastical elements that oppressively rule over the people in all nations. "And in the days of these [totalitarian] kings shall the God of heaven set up a kingdom which shall never be destroyed; and the kingdom shall not be left to other people, but it shall break in pieces and consume all these kingdoms, and it shall stand for ever."—Daniel 2:44; Matthew 24:14. R. 38-40, 25, 27-28.

The literature therefore contains written elaboration upon the oral or recorded phonograph message that was first presented to the people by appellant.

The work thus done by Jehovah's witnesses is a charitable and benevolent work for the benefit of the people and in the public interest and not for private pecuniary gain of appellant. She did not sell or bargain with householders in the sense that peddlers and hawkers do. She merely presented the message or literature to the people as a witness or testimony to them concerning the Kingdom as the only hope and warned them to take steps to avoid the great

catastrophe at Armageddon just ahead in the immediate future. R. 36, 42, 26-27, 25, 14-15, 12.

Appellant admittedly did not apply for or receive a permit or license, or register as is required of commercial retailers of goods, wares and merchandise. Appellant contended that to do so would be an insult to Almighty God, who permits and directs her activity through His Word, the Bible; and that should she so apply it would be an act of disobedience resulting in her everlasting destruction at the hand of Almighty God. The demand by the prosecuting attorney that she comply with the requirement is claimed to be contrary to the law of God and the Constitution, and in excess of terms of the ordinance itself. Therefore, as to such demand the appellant states in the words of the apostle, "We ought to obey God rather than men." (Acts 5:29) She, however, obeys all laws of the land that do not conflict with the law of Almighty God which her covenant or unbreakable agreement requires that she must comply with at all times under all conditions and which covenant cannot be changed by anything, not even death. R. 38-39.

Appellant explained that she sincerely believed what she preached and considered that her entire life must be devoted to this charitable work which she carried on; that she did not do this because of selfish motive but solely because she believed that it was her God-given duty to carry this message to the people in this manner lest they die. In Ezekiel 3:17-19 it is stated: "Son of man, I have made thee a watchman unto the house of Israel: therefore hear the word at my mouth, and give them warning from me. When I say unto the wicked, Thou shalt surely die; and thou givest him not warning, nor speakest to warn the wicked from his wicked way, to save his life; the same wicked man shall die in his iniquity; but his blood will I require at thine hand." R. 39, 41, 42, 44, 18.

History of Proceedings and Federal Questions Raised Below

CORPORATION COURT PROCEEDINGS

Appellant was charged by complaint in the Corporation Court of Paris, Texas, with an alleged violation of the above described ordinance because she did not have a permit required thereby. (R. 1) Among other things the Complaint charged that appellant sold books from house to house in the residential district without applying for or obtaining a permit required by said ordinance. (R. 1) Upon trial in the Corporation Court appellant urged a motion to quash on the ground that the ordinance was unconstitutional. (R. 2-3) Appellant was found guilty as charged in the complaint filed in the corporation court and duly appealed from the judgment of said court by filing a bond. R. 3.

LAMAR COUNTY COURT PROCEEDINGS

The trial in the County Court of Lamar County was *de novo* and evidence was given entirely anew. (R. 52) In the time and manner required by law appellant duly filed her motion to quash the complaint in which appellant attacked the ordinance because it was unreasonable, arbitrary and in excess of the police power, provided for unlimited exercise of arbitrary discretion on the part of the Mayor, and also on its face and as construed and applied, because it abridges appellant's rights of freedoms of speech, press and of worship of Almighty God according to the dictates of conscience, all contrary to the First and Fourteenth Amendments to the United States Constitution. (R. 3, 4) The motion was overruled and appellant excepted. (R. 5) A final judgment convicting the appellant was rendered and entered by the County Court and thereby appellant was fined $100 and costs. (R. 49) Before the court rendered the judgment, and at the close of all the evidence,

appellant duly filed and presented her motion for a judgment and a finding of not guilty for and on account of each of the above reasons urged in the motion to quash. The motion for a judgment was denied and appellant excepted. (R. 5, 7, 47) In open court and in the manner required by law appellant excepted to the final judgment and gave notice of appeal to the United States Supreme Court. R. 7, 48.

The County Court of Lamar County, as well as the Corporation Court, duly passed upon each of said federal questions or assignments attacking the validity of the ordinance and said court held it valid and constitutional, both on its face and as applied and held that the First and Fourteenth Amendments to the United States Constitution had not been violated in applying the ordinance to activity of appellant. R. 3-6, 7, 47, 49.

In the petition for appeal and the assignments of error filed with the jurisdictional statement, appellant complains of the judgment of the County Court of Lamar County, Texas, for and on account of each of the grounds set forth in her motions to quash and for a judgment of acquittal filed in said court. R. 50-54.

Specification of Errors to be Urged

The County Court of Lamar County, Texas, committed reversible error in overruling the aforesaid motions and in rendering judgment because the court should have held that—

(1) The ordinance in question, both on its face and as construed and applied to appellant, is violative of the Federal Constitution in that it abridges and provides for censorship of appellant's freedoms of speech, press, and worship of ALMIGHTY GOD as by Him commanded and according to dictates of her conscience, all contrary to the First and Fourteenth Amendments to the United States Constitution.

(2) The ordinance in question is void on its face because by its terms it is in excess of the police power of the State of Texas and of the City of Paris, and is unreasonable and arbitrary in the means employed which have no reasonable relation to the ends aimed for, nor to the police powers of the state; and by reason thereof it violates the *due process* and *equal protection* clauses of the Fourteenth Amendment to the United States Constitution.

(3) The ordinance is void on its face and as applied because it confers arbitrary and discriminatory powers upon the mayor of the City of Paris in that there is no instruction or limitation upon the exercise of his unlimited discretion conferred in the Mayor to grant or refuse permits that may be issued under the ordinance. Therefore it deprives appellant of her liberty and property without due process of law and equal protection of the laws, contrary to the Constitution of Texas and the Fourteenth Amendment to the United States Constitution.

Points for Argument

ONE

This court should hold that the ordinance is void and unconstitutional as construed and applied to appellant's activity because it abridges and censors the exercise by appellant of the right of freedom to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution.

TWO

This court should hold that the ordinance is void and unconstitutional on its face and as construed and applied to appellant's activity because it abridges and censors the exercise by appellant of the rights of freedom of the press and of speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

THREE

This court should hold that the ordinance is void and unconstitutional on its face and as construed by the court below because it confers arbitrary, unlimited and discriminatory power and broad discretion upon the Mayor of the City of Paris to refuse or grant permits under the ordinance, thereby allowing the denial of liberty and property contrary to the Fourteenth Amendment to the United States Constitution.

FOUR

This court should hold that under Section 237 (a) of the Judicial Code [28 U. S. C. 344 (a)] the appeal provided for therein from a final judgment of the highest court of Texas in which a decision can be had cannot be refused review by this court until application for writ of habeas corpus is presented and refused by some higher court of Texas.

FIVE

This court should hold that under the law and practice of Texas there was not and is not an opportunity for further full review of the judgment in a higher court of Texas by way of writ of habeas corpus or other proceedings.

Summary of Argument

The ordinance makes unlawful the calling from house to house in the City of Paris for the purpose of soliciting orders or selling "books, wares, merchandise or any household article" without first filing an application in writing with the Mayor and obtaining a permit. The applicant is required to show the kind of goods intended to be sold and the nature of the canvass to be made, and give the name of the person desiring the permit.

The ordinance does not place the duty upon the Mayor to issue the permit. It grants full discretion to the Mayor to refuse without just cause or excuse. It provides: "If after investigation the Mayor deems it proper or advisable *he may issue* a written permit." The ordinance contemplates a thorough, independent investigation by the

Mayor. It says: "which permit shall state on its face that it has been issued after a thorough investigation."

The unbridled and unlimited authority to revoke the permit is granted the Mayor without just cause or excuse. Section 2 provides: "on complaint of any person this permit may be revoked and canceled by the Mayor." A fine of from $5 to $200 may be imposed for each violation.

On its face the ordinance does not abridge freedom of worship, but as it has been misused and misapplied to the preaching activity of appellant it is unconstitutional to the extent to which it permits appellant to be convicted for her proper and lawful worship of Almighty God Jehovah. This identical activity has been declared by this court to be worship within the protection of the First and Fourteenth Amendments. *Cantwell* v. *Connecticut,* 310 U. S. 296. The ordinance contains the same type of censorship which was declared unconstitutional in the *Cantwell* case on the grounds that such statute was an abridgment of freedom of worship of Almighty God. The *Cantwell* case controls here.

Both on its face and as construed and applied the ordinance abridges the appellant's right of freedom of speech and of the press contrary to the First and Fourteenth Amendment. The censorial provisions of this ordinance are identical with those declared invalid in the cases of *Schneider* v. *State,* 308 U. S. 147, and *Lovell* v. *Griffin,* 303 U. S. 444. The holding in the case at bar conflicts with those two cases.

The provisions of the Judicial Code granting *appeal* as a matter of right in this case makes immaterial the question as to whether the judgment is subject to full review by habeas corpus proceedings in a higher court of Texas. Moreover the latest decisions do not permit a *full* review of the judgment by habeas corpus in the Texas courts.

ARGUMENT

ONE

This court should hold that the ordinance is void and unconstitutional as construed and applied to appellant's activity because it abridges and censors the exercise by appellant of the right of freedom to worship ALMIGHTY GOD, contrary to the First and Fourteenth Amendments to the United States Constitution.

Freedom to worship ALMIGHTY GOD according to dictates of one's own conscience and as commanded by the Creator in His written Word is one of the rights secured by the Fourteenth Amendment against abridgment by the state. *Cantwell* v. *Connecticut*, 310 U. S. 296.

The undisputed evidence is that appellant was and is an ordained minister of Jehovah God, and that her *way* of worshiping Almighty God is to preach the gospel from house to house and on the streets by distributing literature explaining God-given prophecies of the Bible.

Preaching of the gospel by appellant *in this manner* is not for the private, personal benefit of the individual so preaching, nor for the benevolent corporation printing the literature distributed by said individual. On the contrary, the purpose, aim and effect of appellant's dissemination of such information through distributing said literature is to enlighten and benefit persons willing to receive and study that literature.

Freedom of conscience, freedom of worship and "religious" liberty are not limited to right of establishment and maintenance of the various denominations. The early struggles in this land of *freedom of worship* were largely centered upon the right to hold public assemblies and for groups of individuals to act unitedly according to their understanding of God-given commands contained in the Bible, contrary to the prevailing religion of the state. That

battle was fought 150 years ago, and today in these United States over two hundred religious denominations act freely, unhampered by censorship or restriction. But that fundamental liberty goes far beyond the right of Protestants, Jews and Catholics to build churches, hire clergymen and attend meetings. Many of the ministers who came with the early settlers were itinerants. In fact, calling from house to house was then the only way to build up a congregation. Today, also, that is true.

To go into some building and engage in singing songs or listening to someone address the people is not the only *way* of exercising one's right of worship. Often such is an act of drawing near unto God merely with one's mouth. In this connection it is appropriate to cite the words of the Lord Jesus concerning those who thus attempt to worship God, to wit: "This people draweth nigh unto me with their mouth, and honoureth me with their lips, but their heart is far from me. But in vain they do worship me, [because they are] teaching for doctrines the commandments of men." "Thus have ye made the commandment of God of none effect by your tradition." (Matthew 15: 6, 8, 9) Concerning those who resort to such formalistic practice and call it worship, Jesus Christ's apostle Paul wrote: "Having a form of godliness, but denying the power thereof." (2 Timothy 3:5) Appellant in this case was not haranguing the people, and not disturbing or annoying them. She was quietly calling from house to house at a reasonable hour, respectfully and humbly inviting householders' attention to God's Word, exhibiting to them Bible truths in printed form that they might be aided and comforted in this time of unprecendented distress and perplexity. No one who really believes in righteousness and hates iniquity, violence and oppression should want to interfere with such a noble, laudable and charitable work.

If the State's contention here is to be upheld, then it would mean that a clergyman of any religious denomination calling upon the people by going from house to house

to take a church or parish census or to sell to his parishioners at their homes a new version of the Bible or of a common prayer book, or other religious paraphernalia such as holy candles, rosaries, etc., could not do so without His Honor the Mayor first issuing to him a permit. According to this ordinance such clergyman not only must apply for a permit but must submit testimony as to his good moral character and then leave it to the Mayor to determine whether or not he met the requirements of the ordinance. Such rule has never obtained in any country except a totalitarian state, and certainly could have no application in this "land of liberty".

It is customary for nuns of the Roman Catholic religious organization, in performance of their appointed duties, to call regularly from house to house and solicit and receive from persons money and other contributions. Under the Paris ordinance as applied they must first obtain a permit so to call from house to house. Otherwise, they would be guilty of a misdemeanor.

The religious organization known as the Salvation Army sends its representatives among the people and they call upon them from house to house soliciting contributions and selling their literature. Under the construction placed upon the Paris ordinance by appellee their acts in so doing are in violation of the law.

This is purely prior censorship and absolutely amputates the right of a true follower of Jesus Christ to worship and serve ALMIGHTY GOD as commanded by Him in His written Word, the Bible. We submit that if today the Lord Jesus Christ were on earth in the flesh and went from house to house in the State of Texas as He did in ancient Palestine, He would be liable to be incarcerated because of this ordinance. In times of old the apostles of Jesus Christ likewise went from door to door teaching the people and receiving, simultaneously, valuable things and services from persons of good will toward Almighty God to aid in carrying on the work of preaching God's kingdom mes-

sage. See Luke 8:1, 3; John 4:7, 8; 13:29; Mark 6:37. Now should those apostles be on earth in the flesh and doing this same work in the City of Paris, Texas, they would be liable to be imprisoned, convicted and branded as criminals, as was appellant, solely by reason of the fact that they were humbly and sincerely performing a lawful and beneficial (*to others*) work in the community in compliance with and conscientious obedience to the written commands of Almighty God.

In *Cantwell* v. *Connecticut*, 310 U. S. 296, the statute provided that it was unlawful to solicit for a religious cause or organization unless such cause shall have been approved by the secretary of the public welfare council upon application duly made for permit. It was provided that the permit may be issued if the secretary found that the cause was genuine, free from fraud and a religious one. Mr. Justice Roberts said:

> "We hold that the statute, as construed and applied to the appellants, deprives them of their liberty without due process of law in contravention of the Fourteenth Amendment. . . . The appellants urge that to require them to obtain a certificate as a condition of soliciting support for their views amounts to a prior restraint on the exercise of their religion within the meaning of the Constitution. . . .
>
> "It will be noted, however, that the Act requires an application to the secretary . . . He is not to issue a certificate as a matter of course. His decision to issue or refuse it involves appraisal of facts, the exercise of judgment, and the formation of an opinion. He is authorized to withhold his approval if he determines that the cause is not a religious one. Such a censorship of religion as the means of determining its right to survive is a denial of liberty protected by the First Amendment and included in the liberty which is within the protection of the Fourteenth."

To construe the Paris ordinance to cover appellant's activity is equivalent to wording the ordinance so as to read:

> 'All persons receiving money contributions toward preaching the gospel or engaging in acts of worship of Almighty God or in any kind of religious practice must procure a license from the city.'

No reasonable person would suggest that such a law is constitutional. All will admit that such a law would be unconstitutional and reprehensible. Yet if the Court sustains the law here sought to be applied it will in effect do that very evil thing.

The activity of Jehovah's witnesses in distributing Bible literature is admittedly a "religious" rite, i. e., their *way* of disseminating Bible truths—preaching the gospel. Their accepting money contributions, free will offerings, while wholly *incidental* to their primary aim of encouraging recipients of literature to study the printed message, is a necessary integral part of the entire *act of worship* which is protected in the same manner as is the transaction of recognized religious clergymen who solicit money contributions from the pulpit as well as in the homes of the people, both by personal visitation and over the radio.

To permit or to encourage application of this type of ordinance to the activity of preaching by Jehovah's witnesses is to regulate "church" and ultimately permit politicians and others to establish through some such regulation a *state religion*, i. e., by requiring the license; for those not desired by the state would be suppressed and only the one or ones pleasing to the particular factions in power at the time could exist or operate. Thus the people of Paris would be pushed back into the miserable condition of intolerance, lethargy and indolence of the Dark Ages from which founders of this "land of liberty" fled. All tendencies to accomplish a joinder of "church and state", either di-

rectly or indirectly, should be nipped in the bud. The sedulous avoidance by America of any move toward joinder of "church and state" is discussed in the *Encyclopedia Americana*, Vol. 6, pp. 660, 657-659; see, also, *Columbia Encyclopedia* (Columbia University Press); *The Catholic Encyclopedia*, Vol. 14 (1912), pp. 250-253.

The position taken by counsel for the State clearly discriminates in favor of recognized religious clergymen, against the comparatively "poor and weak" witnesses of Jehovah God, preaching in the same humble manner as did the Lord Jesus Christ. This discrimination cannot be screened for long. The fair judicial mind rebels against the arbitrary requirement contained in this ordinance which allows for prohibition and impairment of the spread of the gospel message even though it is controversial and runs counter to established notions of some persons in any community. It should be remembered that Christ Jesus and His apostles were by some despised, hated and persecuted and charged with 'turning the world upside down and refusing to give tribute to Caesar'. (See Luke 23:2; Acts 17:6; 24:5) That charge was FALSELY made by the clergy of the day and their stooges, as the Biblical account, as well as the profane historical account, abundantly proves. Will this Court permit Jesus' footstep followers, Jehovah's witnesses of the present day, to be similarly denied their rights because of *false* charges made against them, notwithstanding THE FACT that the common people today, as in Jesus' day, gladly hear and receive the message brought to them by Jehovah's servants?—Mark 12:37-40.

The best definition of the word "worship" is that given by the Lord Jesus Himself, and which is:

> "God is a spirit, and they that worship him must worship him in spirit and in truth."—John 4:24.

To worship Almighty God in spirit and in truth means to obey His commandments, to serve Him exclusively and

intelligently for advancement of HIS purposes. (Matthew 4:10) The definition of worship is amplified by the *acts* of the Lord Jesus Christ in executing the written commands of His Father, JEHOVAH GOD, and also the like *acts* of the faithful apostles of Jesus Christ. Jehovah's Son, the Lord Jesus, when on earth went about among the people, from house to house and in the public ways or streets, preaching the good news or gospel of God's Kingdom concerning which all God's prophets had in like manner spoken and written from the time of Abel, first of Jehovah's witnesses, murdered by his brother Cain. Apostles of Jesus Christ preached in like manner.—Acts 5:42; 20:20; Hebrews 11:4-40; Revelation 3:20.

It is contended that the words of Jesus, "Render therefore unto Caesar the things which are Caesar's; and unto God the things that are God's" (Matthew 22:21), mean that a faithful minister of Almighty God should willingly ask for a license to do what God has commanded, when required by men so to do, as in this case. Such interpretation of Jesus' words is *private* (See 2 Peter 1:20) and contrary to the construction placed upon those words by the Most High God Himself. To do an act which results in a violation of the covenant made with Jehovah God to do His will is not a requirement of "Caesar" that can or should be complied with. By recording the course of action of His faithful servants (Hebrews, chapter 11), Almighty God has made clear His true interpretation of the words of Jesus above quoted. That true construction requires all faithful servants of God and His Son Christ Jesus willingly and joyfully to conduct themselves in an upright manner, always doing the will of Jehovah, and obeying every law of the land which is not in conflict with Jehovah's supreme law. This position is exactly like that approved by Blackstone and Cooley. (See Blackstone, *Commentaries*, Chase 3d ed., pp. 5-7; Cooley, *Constitutional Limitations*, 8th ed., p. 968.) The apostles followed boldly in the course of Jesus Christ and were similarly arrested and commanded to

cease preaching. They were mobbed, threatened and beaten for refusing to discontinue their preaching; in court were *falsely* charged with 'turning the world upside down' (Acts 17:6) and 'moving sedition throughout the whole world' (Acts 24:5) by advocating 'a government the king of which is one Jesus'. (Acts 25) They promptly answered their accusers: "We ought to obey God rather than men." (Acts 5:17-41) "Whether it be *right in the sight of God* to hearken unto you more than unto God, judge ye." (Acts 4:19, 20) It is also written concerning those faithful witnesses and servants of Jehovah: " . . . daily in the temple, and in every house, they *ceased not* to teach and preach Jesus Christ." (Acts 5:42) This same reasonable, consistent and God-approved position must be taken today by Jehovah's witnesses.

Until recently a law such as the challenged ordinance, as applied to sincere followers of Jesus Christ, was not dreamed of in America. But since the onrush of totalitarian spirit and of the conspiracy to rule America by dictators many strange and unusual things have come to pass. The dictatorial and totalitarian spirit of alien and pernicious ideologies has struck down the institutions of life and liberty in all the countries of Europe, and is rapidly moving forward even in this country. In this day of dire distress unmatched in human history nothing could be of greater importance than to inform the people of the gracious provisions made by ALMIGHTY GOD for the oppressed, the "refugees" and the poor, and which information can be best transmitted to the people in their homes by means of printed publications carried to them, as appellant was doing. Only the dictators would deprive the people of this information, as in this case.

TWO

This court should hold that the ordinance is void and unconstitutional on its face and as construed and applied to appellant's activity because it abridges and censors the exercise by appellant of the rights of freedom of the press and of speech, contrary to the First and Fourteenth Amendments to the United States Constitution.

The ordinance on its face imposes censorship of the press and of speech equally vicious as the ancient censorship of the press that prevailed in England and later in some of the colonies prior to the American Revolution. See *Near* v. *Minnesota*, 283 U. S. 697. A similar ordinance providing for issuance of a permit from the City Manager of the City of Griffin, Georgia, as a condition precedent to the right to distribute literature in that community was held by this Court to be void on its face and unconstitutional. (*Lovell* v. *Griffin*, 303 U. S. 444) There this Court said: "Whatever the motive which induced its adoption, its character is such that it strikes at the very foundation of the freedom of the press by subjecting it to license and censorship."

Here the challenged ordinance is not unlike that declared by this Court to be unconstitutional in the *Schneider* case, supra. We submit that the provisions of the Paris ordinance are substantially the same as those of the Connecticut statute this Court declared invalid because providing for *prior censorship* of the exercise of freedom to worship Almighty God in the case of *Cantwell* v. *Connecticut*, 310 U. S. 296.

The Irvington (New Jersey) ordinance provided that no person could canvass, solicit or distribute circulars, or other matter or call from house to house "without first having reported to and received a written permit from the

Chief of Police". There this Court held that the most effective instruments for dissemination of information and opinion were pamphlets and that the most efficient and proper way to distribute them is "at the homes of the people". The ordinance was declared invalid because it provided for and allowed unconstitutional censorship of freedom of the press and speech. *Schneider* v. *State*, 308 U. S. 147.

The Paris ordinance is also similar to that held invalid by the Florida Supreme Court in *State ex rel. Hough* v. *Woodruff*, 147 Fla. 299, 2 S. 2d 577. See also an opinion by the same court in *State ex rel. Wilson* v. *Russell*, 146 Fla. 539, 1 S. 2d 569. Reference is here made to *Borchert* v. *Ranger*, 42 F. Supp. 577. See, also, *Village of South Holland* v. *Stein*, 373 Ill. 472, 26 N. E. 2d 868, where the municipality made it unlawful for anyone to canvass for orders of goods, etc., or solicit or sell merchandise from house to house without obtaining a solicitor's permit from the village board. The Illinois Supreme Court held that the conviction violated the State and Federal Constitutions.

In the recent decision, *Jones* v. *Opelika*, 316 U. S. 584, this Court says:

> "Upon the courts falls the duty of determining the validity of such enactments as may be challenged as unconstitutional by litigants. In dealing with these delicate adjustments this Court denies any place to administrative censorship of ideas or capricious approval of distributors. In *Lovell* v. *Griffin*, 303 U. S. 444, the requirement of permission from the city manager invalidated the ordinance, pp. 447 and 451; in *Schneider* v. *State*, that of a police officer, pp. 157 and 163. In the *Cantwell* case, the secretary of the public council was to determine whether the object of charitable solicitation was worthy, p. 302. We held the requirement bad.
>
> " . . . In *Lovell* v. *Griffin*, 303 U. S. 444, we held in-

> valid a statute which placed the grant of a license within the discretion of the licensing authority. By this discretion, the right to obtain a license was made an empty right."

The license permit provided for in the ordinance in question is expressly condemned in *Near* v. *Minnesota,* 283 U. S. 697, where the challenged statute authorized an injunction by a court against one who had published a libelous, scurrilous, vicious, and immoral publication so as to prevent future injury by future repetition of the same wrong or violation of the privilege and right of freedom of the press. In that case the state argued, as here, that the provision for the injunction (here it is the provision for the license) was solely to prevent the abuse of the right and to protect others from injury. Such argument was strongly answered by this Court in that case. The statute was declared unconstitutional and the injunction dissolved.

This ordinance, when construed so as to cover activity guaranteed by the State and Federal Constitutions against abridgment, presents a serious question. In *Schneider* v. *State,* supra, Mr. Justice Roberts said:

> "Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic institutions."

In *Hannan* v. *Haverhill* (CCA-1) 120 F. 2d 87, the court said:

> "Restrictions properly applicable to hawkers and peddlers selling ordinary articles of merchandise on the streets might not be appropriate to regulate the sale and distribution of literature of the sort offered for sale by the plaintiffs [Jehovah's witnesses]."

It is the construction and application of the ordinance, rather than its cold black-and-white word provisions, that make it unconstitutional. It may be valid when applied to one state of facts and invalid when applied to another. *Whitney* v. *California*, 274 U. S. 357; *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U. S. 282; *South Holland* v. *Stein*, supra; *Concordia Fire Ins. Co.* v. *Illinois*, 292 U. S. 535, 545.

The historical reference to 'pamphlets' in the opinions of the United States Supreme Court in the *Lovell* case above cited, and in the case of *Schneider* v. *State*, supra, is not limited to pamphlets which are distributed without cost. Every student of history knows that the pamphlets referred to were not circulated gratis, but were distributed to subscribers or sold. They "were the immediate predecessors of the weekly newspapers. . . . Under Queen Anne pamphlets arrived at a remarkable degree of importance. Never before or since has this method of publication been used by such masters of thought and language. Political writing of any degree of authority was almost entirely confined to pamphlets. If the Whigs were able to command the services of Addison and Steele, the Tories fought with the terrible pen of Swift." (*Encyclopedia Britannica*, Vol. 20, Pamphlets, pp. 659-660) "The pamphlet is popular as an instrument of religious or political controversy in times of stress. It is relatively inexpensive to the purchaser and to the author or the publisher, it can be more timely than a book bound in cloth or leather, and it gives author and readers the maximum benefit of freedom of the press." (*The Columbia Encyclopedia*, 'Pamphlet') See also *Commonwealth* v. *Reid*, 144 Pa. S. C. 569, 20 A. 2d 841, where the Pennsylvania Superior Court declared an ordinance of similar kind unconstitutional as applied to the work of Jehovah's witnesses.

It is a well-known fact (of which this Court can take judicial notice) that the principal method of circulation and distribution of the large newspapers and national periodicals and magazines, weekly and monthly, is by newsboys

and men, both on the streets and from house to house throughout the entire nation. This is particularly true with respect to *sale* of magazines such as *Collier's, The Ladies Home Journal, The Saturday Evening Post* and *Liberty.* This has been the principal means of distribution of pamphlets, especially since their original use and to this day.

It is utterly ridiculous to conclude or state that the 'taking of funds' for press activity justifies the state in regulating or censoring "the press". If this were true, then every newspaper in the country would have to go bankrupt or else be censored, regulated, controlled and dictated to as they were in the "dark ages" and as they are now regulated in continental Europe. The principle announced by the court below is iniquitous in the extreme. That court has seized upon the "incidental" part of appellant's press activity, namely, 'taking of funds,' and declares *that* activity is subject to regulation and thereby appellant's "predominant activities", namely, press activity and free exercise of the right of worship, the State amputates, takes away, regulates and censors. This is certainly a dangerous fallacy, pernicious, foreign to principles of American liberty, and which should not be permitted to stand. Cf. *Cantwell* v. *Connecticut,* supra; *Tucker* v. *Randall,* 18 N. J. Misc. 675, 15 A. 2d 324.

Moreover, it cannot be reasonably argued that because appellant received money contributions to help partially defray the cost of publishing more like literature she is engaged in a commercial enterprise and thus to be required to obtain a permit on the ground that she is acting as a "peddler" and therefore outside of the protection of free speech and free press afforded by the State and Federal Constitutions. To hold such a doctrine would mean the end of constitutional liberties in this country and would leave the exercise of the four freedoms only to those who are of the *well-to-do* and ultra-rich class who can afford to give away literature free or afford more exclusive means

of dissemination of information, such as the radio, the public press, etc.

Recently the New York Court of Appeals, in *People* v. *Barber* [one of Jehovah's witnesses], considered the effect of the State Constitution upon impairment of these fundamental rights under a license-tax law similar to that sustained by this Court in *Jones* v. *Opelika*, supra. That court held (January 7, 1943) that the New York Constitution did not allow an impairment of civil rights to the extent that this court had gone in the *Opelika* case. Refusal of that court to follow this court on the same question should be persuasive that this court's decision in the *Opelika* case is wrong. Copies of the unanimous opinion of the New York Court of Appeals have been provided to members of this court and here we refer to it.

In the trial court it was argued by the attorney for the state, and it is assumed that the same argument will be made here, that the taking of money contributions constituted a "sale" and brought the transaction within that condemned by the majority opinion of this Court in the *Jones* v. *Opelika* cases. In the court below an attempt was made to distinguish the *Schneider, Cantwell* and *Lovell* decisions on this ground, to wit, the "sale" removed the constitutional protection that was sustained in those cases. It was contended that the facts were different in this case and the *Jones* v. *Opelika* cases. It was contended in the trial court that while the *Constitution* protected the press from license tax (*Grosjean* v. *American Press Co.*, 297 U. S. 233), when literature was "sold" the distributor could be subjected to a license tax because the sale removed the constitutional protection. (*Jones* v. *Opelika*, supra) It was further contended that if the "sale" removed the constitutional protection so as to permit "lawful" abridgment and burden by "license tax" then, by force of reason, the same "*sale*" would remove the constitutional protection so as to sustain prohibition, license, censorship, etc.

The distinction made by this Court's majority opinion

in the *Jones* v. *Opelika* cases between that holding and the *Schneider, Cantwell* and *Lovell* decisions was not sufficiently clear to the judge of the court below who, though not a *licensed attorney* but a *lay preacher* of the Baptist faith, concluded that the *Jones* case nullified said cases as to the case at bar. We assume that if the distinction made therein needs further clarification this Court will announce the same. In effect the trial court held that this Court *dynamited* the constitutional dam of protection and permitted encroachment to flood in upon and thus drown out the "four freedoms" in every case where there is claimed to be a "sale". However, if it is true that this Court held that "sale" of literature removes constitutional protection from license and censorship, then we submit it is *high time* the Court set aside such *Jones* v. *Opelika* decision and hold it *for naught* along with the judgment of the court below.

THREE

This court should hold that the ordinance is void and unconstitutional on its face and as construed by the court below because it confers arbitrary, unlimited and discriminatory power and broad discretion upon the Mayor of the City of Paris to refuse or grant permits under the ordinance, thereby allowing the denial of liberty and property contrary to the Fourteenth Amendment to the United States Constitution.

The decision of this Court in *Yick Wo* v. *Hopkins*, 118 U. S. 356, is the leading authority on this subject. It clearly and definitely decided that an ordinance conferring arbitrary authority upon the mayor to grant or refuse permits for conduct of a laundry business was invalid as denying *equal protection* of the laws, within the Fourteenth Amendment to the United States Constitution. The Court

quoted with approval (at page 372) from a Maryland case, as follows:

> "It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented . . . ; and when we remember that this action or non-action may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism or other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecessary to suggest or comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to everyone who gives the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void."

The New Hampshire Supreme Court recently held that a law is invalid when its mandate to an enforcement agency is in such broad terms as to leave the agency of enforcement with unguarded and unrestricted discretion in the assigned field of activity. See the case of *Ferretti* v. *Jackson*, 88 N. H. 296, where this same court had under consideration the Milk Control Act, the conclusions there being as indicated above.

As previously quoted at pages 27 and 28 of this brief, the *Jones* v. *Opelika* case recognized that granting of the license conditioned upon the Mayor's "thorough" investigation in the uncertain and unlimited field as he may desire to act, in effect gives the Mayor uncontrolled power of prohibiting the exercise of constitutional rights. This is the evil of "previous restraint" upon the "sacred rights" guaranteed under the Constitution, which rights have always been unquestionably beyond reach of such censorship.

See footnote 5 of the opinion of Mr. Justice Murphy in the case of *Jones* v. *Opelika*, supra, where it is said:

"When the Opelika ordinance is considered on its face, there is an additional reason for its invalidity. The uncontrolled power of revocation lodged with the local authorities is but the converse of the system of prior licensing struck down in Lovell v. Griffin, 303 U. S. 444. Here, as there, the pervasive threat of censorship inherent in such a power vitiates the ordinance."

The opinion of Chief Justice Stone in *Jones* v. *Opelika*, supra, reads in part as follows:

"It is of no significance that the defendant did not apply for a license. As this Court has often pointed out, when a licensing statute is on its face a lawful exercise of regulatory power, it will not be assumed that it will be unlawfully administered in advance of an actual denial of application for the license. But here it is the prohibition of publication, save at the uncontrolled will of public officials, which transgresses constitutional limitations and makes the ordinance void on its face. The Constitution can hardly be thought to deny to one subjected to the restraints of such an ordinance the right to attack its constitutionality, because he has not yielded to its demands. *Lovell* v. *Griffin*, supra, 452-53; *Smith* v. *Cahoon*, 283 U. S. 553, 562. The question of standing to raise the issue in this case is indistinguishable from that in the *Lovell* case, where it was resolved in the only manner consistent with the First Amendment.

"The separability provision of the Opelika ordinance cannot serve, in advance of judicial decision by the state court, to separate those parts which are constitutionally applicable from those which are not. We have no means of knowing that the city would grant any license if the license could not be made revocable at will. The state court applied the ordinance as writ-

ten. It did not rely or pass upon the effect to be given to the separability clause, or determine whether any effect was to be given to it. Until it has done so this Court—as we decided only last Monday—must determine the constitutional validity of the ordinance as it stands and as it stood when obedience to it was demanded and punishment for its violation inflicted. No. 782, *Skinner* v. *Oklahoma*, decided June 1, 1942; *Smith* v. *Cahoon*, supra, 563-64."

We submit that for the above reasons the ordinance is void and on this ground the conviction should be set aside, in accordance with the universal rule respecting any ordinance which is, as here, void on its face.

FOUR

This court should hold that under Section 237 (a) of the Judicial Code [28 U.S.C. 344 (a)] the appeal provided for therein from a final judgment of the highest court of Texas in which a decision can be had cannot be refused review by this court until application for writ of habeas corpus is presented and refused by some higher court of Texas.

At the threshold to consideration of the question of the Court's jurisdiction, which some opine depends upon whether or not the judgment of the court below is subject to further review in a higher court of Texas, this Court is confronted with the proposition that this case comes here by *appeal*, as a matter of right, and not by *petition for writ of certiorari*, the granting of which is discretionary with this Court. In *Philadelphia & Reading Coal & Iron Co.* v. *Gilbert* (1917) 245 U. S. 162, 165, this Court said that

the difference between writ of error, now appeal, provided in the Judicial Code, and *certiorari* "lies in the fact that a writ of error is granted as of right, while a writ of certiorari is granted or refused in the exercise of sound discretion."

Such requirement cannot be insisted upon in the case at bar because—

(1) Appellant is here as a matter of right from the highest court of Texas in which a decision can be had, and

(2) We do not have right of full review of the judgment but only a partial review.

This APPEAL satisfies the requirements of Section 237 (a) of the Judicial Code, 28 U. S. C. A. 344, so as to confer jurisdiction upon this Court to consider the substantial *federal questions* here presented.

By Article 53 of the Texas Code of Criminal Procedure the judgment of the court below is made final in a case of this kind and no further right of appeal to a higher state court is allowed. The Court of Criminal Appeals, in conformity with the mandate and injunction contained in Article 53, has consistently held that a direct appeal does not lie from a judgment of the County Court where the fine imposed on trial *de novo* did not exceed $100 and costs in cases originating in the justice or corporation courts. The judgment of the County Court is final and such court is the *highest court* in which a decision can be had. *Hodge* v. *State*, 137 Tex. Cr. R. 195-6, 128 S. W. 2d 1205; *Phillips* v. *State*, 138 Tex. Cr. R. 9, 133 S. W. 2d 580; *Harlan* v. *State*, 138 Tex. Cr. R. 47, 134 S. W. 2d 289; *Conley* v. *State*, 141 Tex. Cr. R. 478, 149 S. W. 2d 99; *Spann* v. *State*, 161 S. W. 2d 494; and *Ragsdale* v. *State*, 120 Tex. Cr. R. 63, 47 S. W. 2d 278.

Being the highest court in which a decision could be had in this case in the State of Texas, it was not necessary that appellant thereafter begin a new proceeding in some other court to obtain relief from the judgment. In *Gregory* v. *McVeigh*, 23 Wall. 294, 306, a writ of error issued to

the Corporation Court of Alexandria, Virginia. There was a motion to dismiss for want of jurisdiction because, as there alleged by defendant in error, such was not the highest court of the state in which a decision could be had. The writ of habeas corpus was available under Virginia law to the plaintiff in error, but such was not applied for in that case nor did this Court in overruling the motion to dismiss discuss that question. See also *Downham* v. *Alexandria*, 9 Wall. 659, appeal from the District Court, and also *Cohens* v. *Virginia*, 6 Wheat. 264.

In another case originating in Texas, *Grovey* v. *Townsend*, 295 U. S. 45, it was held that this Court had jurisdiction on appeal directly from the justice court. There the plaintiff sued for damages in amount less than $20 for alleged violation of Texas election laws. The statutes of Texas prevented a further appeal to the County Court because the amount sued for did not exceed $20 and costs. It was held that the justice court was the highest court in which a decision could be had in that case in the State of Texas, and for that reason this Court took jurisdiction and decided the case on the merits.

Neither the case of *Tenner* v. *Dullea*, 314 U. S. 585, 692, No. 713 October Term 1941, nor the older case of *Mooney* v. *Holohan*, 294 U. S. 103, 115, gives the theory urged against jurisdiction of this case any comfort or strength in argument. Both of these cases involved "discretionary powers" of this Court. The *Tenner* case was a petition for writ of habeas corpus presented originally to the Superior Court of San Francisco, California. The Constitution, statutes and decisions of California, although denying an appeal from such decision of the Superior Court refusing the application, specifically allow presentation of successive *original* applications for writs to the District Court of Appeals and to the Supreme Court of California where full hearing is allowed on all issues involved. There was no decision or statute which limited the jurisdiction of such courts in habeas corpus as exists

in Texas. The Texas Court of Criminal Appeals denies original habeas corpus jurisdiction in such cases as these. The *Tenner* case was brought to this Court by petition for a *discretionary writ*, the writ of certiorari, and not by appeal. *This case is here on appeal.*

The other ground of distinction is that this is a direct appeal from the judgment of conviction and not an appeal from proceedings which are discretionary, as this Court holds *habeas corpus proceedings* to be.

In the *Mooney* case, supra, the effort was made to apply directly to this Court in an original application for a writ of *habeas corpus* to have this *federal court* relieve the petitioner from the force of a state judgment rendered against him under a state penal statute. His application was addressed to the *sound discretion* of this Court on original motion for leave to file such application. It did not involve a direct appeal from the judgment of conviction. In the exercise of its discretion this Court denied the motion for leave to file on the grounds that Mooney had not invoked the corrective judicial remedy of habeas corpus afforded by the state of California, then open to him. An entirely different proposition is involved in the case at bar. What is here presented is an appeal as a matter of right under an Act of Congress where there is drawn in question the validity of *state legislation* under the Constitution of the United States.

In that case the California courts were open to Mooney to make the same full complaint against the judgment as he was making before this Court on his motion for leave to file petition for writ of habeas corpus. Here there is not claimed to be in Texas a remedy as full as that afforded under the Judicial Code allowing an appeal. At best the most appellee claims available to appellant is the 'narrow way' of procedure, allowing only partial review, before the Court of Criminal Appeals, *as to whether or not the ordinance is void on its face and by its terms.* It is conceded that in the courts of Texas there is no

broader way to review by any process or proceedings the other and more extensive question of whether or not the ordinance is applied so as to abridge and deny appellant's constitutional rights of free speech, press and worship guaranteed by the 1st and 14th amendments.

The *Mooney* and *Tenner* cases are decisively distinguished from the case at bar by this Court in the case of *Edwards* v. *California*, 314 U. S. 160, where this Court entertained a direct appeal from the Superior Court of Yuba County, California. No further appeal was allowed to a higher court of California; however, there was available the remedy of the writ of habeas corpus under the law and practice of California. *California Constitution, Article VI, sections* 1, 4, 4b *and* 5. *Matter of Perkins*, 2 Cal. 424; *California Penal Code*, section 1475, and *Matter of Zaney*, 164 Cal. 724, 727.

In the case of *Kim Young*, appellant, v. The People of the State of California (joined with *Schneider* v. *State* at 308 U. S. 147) appeal was allowed from the Superior Court of Los Angeles County. In that state a writ of habeas corpus could have been applied for to the District Court of Appeals or to the Supreme Court of California, as provided by California statutes. This Court did not discuss the jurisdictional question at length, but said: "The Superior Court of Los Angeles County affirmed the judgment. That court being the highest court in the State authorized to pass upon such a case, an appeal to this court was allowed."

Earlier cases in which this Court entertained writs of error, now appeals, are cited in *Kentucky* v. *Powers*, 201 U. S. 1, and other cases cited at page 2, supra. See also *U. S. C. A. Title* 28 *Section* 344, *note* 32.

Moreover, the rule laid down in the *Mooney* and *Tenner* cases is based merely on considerations of "orderly procedure" and proper exercise of this Court's discretion; but, a mere rule of practice should never be permitted to override a constitutional right or the statutory right

of appeal allowed under the Judicial Code. *Agnello* v. *United States,* 269 U. S. 20.

That this is a final judgment subject to review by this court there can be no doubt, as was held in *Betts* v. *Brady,* 316 U. S. 455, 460-461. There this Court said:

> "It is true that the order was not final, and the petitioner has not exhausted state remedies in the sense that in Maryland, as in England, in many of the states, and in the federal courts, a prisoner may apply successively to one judge after another and to one court after another without exhausting his right. We think this circumstance does not deny to the judgment in a given case the quality of finality requisite to this court's jurisdiction. Although the judgment is final in the sense that it is not subject to review by any other court of the State, we may, in our *discretion,* refuse the writ when there is a higher court of the State to which another petition for the relief sought could be addressed, but this is not such a case."

We submit that this Court should hold that its jurisdiction in the case at bar is not impaired by any such rule advanced by appellee.

Under all the circumstances of this case this Honorable Court should assume jurisdiction. In *Cohens* v. *Virginia* (1821) 6 Wheat. 264, 404, Mr. Chief Justice Marshall said:

> "It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exer-

cise of jurisdiction which is given than to usurp that which is not given. The one or the other would be treason to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously perform our duty."

FIVE

This court should hold that under the law and practice of Texas there was not and is not an opportunity for further full review of the judgment in a higher court of Texas by way of writ of habeas corpus or other proceedings.

Now we turn to a consideration of the question of whether or not under the law and practice of Texas the judgment can be *fully reviewed* on this record by a higher state court by habeas corpus or other proceedings.

PRIOR to the holding of the Texas Court of Criminal Appeals in the case of *Ex parte Largent*, 162 S. W. 2d 419, it would have been admitted by us that a further review could be had by way of writ of habeas corpus; but *since* such decision, unjustifiably overruling previous holdings allowing a review, it can now be definitely stated that the remedy of habeas corpus in the District Court and Court of Criminal Appeals does not afford appellant a *full review* of the judgment.

The rule adopted by the Court of Criminal Appeals, which must be followed by the district courts, is that in this type of judgment rendered in the county court the inquiry is limited to the one question, to wit, *Is the ordinance unconstitutional and void on its face and by its terms?* If it is not, or if the ordinance is unconstitutional only as enforced and applied, the court cannot grant the writ, and if granted it must be denied. That court says that in this type of judgment it cannot make inquiry into what

facts are involved or whether the undisputed evidence shows that the ordinance does not apply.

That a judgment remanding a relator to custody in a habeas corpus proceeding is a final and appealable judgment within the meaning of the Judicial Code defining this Court's jurisdiction on appeal is too well established to require citation of authority. The fact that cases can be brought here by way of habeas corpus does not deny this Court's right to review directly by appeal or certiorari a conviction in a state court. This Court can review both, but the right to review one does not deny the right to review the other. See *Herndon* v. *Georgia*, 295 U.S. 441, and *Herndon* v. *Lowry*, 301 U.S. 242. Therefore, the fact that this Court considered the case of *Collins* v. *Texas*, 223 U.S. 288, habeas corpus proceedings involving the validity of a proceeding brought in the county court under the Unlawful Medical Practice Act of Texas; and *Tinsley* v. *Anderson*, 171 U.S. 101, a review by habeas corpus of an imprisonment for contempt of the district court, does not impair the jurisdiction of this court in this case.

Where no constitutional question is involved, or conviction is not void, it has been invariably the rule of Texas Court of Criminal Appeals in habeas corpus proceedings not to review a judgment of conviction rendered on trial de novo (on appeal from the Justice or Corporation courts) in the County Court where the fine imposed did not exceed $100 and costs. So to do is held to be employing the writ to do indirectly what is prohibited directly by the Code of Criminal Procedure, Article 53. *Ex parte Kent*, 49 Tex. Cr. R. 12, 90 S. W. 168; *Ex parte Rogers*, 83 Tex. Cr. R. 152, 201 S. W. 1157.

In Texas the writ of habeas corpus is declared to be the principal bulwark of human liberty in that State. *Ex parte Calhoun*, 91 S. W. 2d 1047.

In cases where the petition for writ of habeas corpus was brought for the purpose of reviewing the evidence to determine whether or not it was sufficient, or whether or

not there was evidence to sustain the conviction, the Court of Criminal Appeals universally held to the rule that if there was no constitutional question or if the judgment was not void, it would not review by habeas corpus said judgment of conviction in instances where the case originated in the justice or corporation courts and the fine imposed on trial de novo did not exceed $100 and costs. To do so is held to be employing the writ to do indirectly what is prohibited directly by the Code of Criminal Procedure, Article 53. *Ex parte Kent*, 49 Tex. Cr. R. 12, 90 S. W. 168; *Ex parte Rogers*, 83 Tex. Cr. R. 152, 201 S. W. 1157, and *Ex parte Slawson*, 139 Tex. Cr. R. 607, 141 S. W. 2d 609.

There are many recognized exceptions to the above rule. We now turn to a discussion of the cases recognizing these exceptions for the purpose of showing that the decision of the court in the *Largent* case (162 S. W. 2d 419) is fictitious evasion of a properly raised federal question.

In instances where the Court of Criminal Appeals found the ordinance or statute to be unconstitutional on its face the writ of habeas corpus has been unhesitatingly sustained to release one held under a judgment of conviction in the county court on trial de novo in appeals from the justice and corporation courts. In *Ex parte Patterson*, 42 Tex. Cr. R. 256, 58 S. W. 1011, the ordinance was void on its face because it prohibited a bowling alley within 100 yards of a residence. In *Ex parte Spelce*, 119 S. W. 2d 1037, a Dodd City ordinance prohibiting dance hall within 400 feet of churches was held void on its face. *Ex parte Faulkner*, 158 S. W. 2d 525, holds the "Green River" ordinance of Canyon unconstitutional according to its unreasonable terms. *Ex parte Farnsworth*, 61 Tex. Cr. R. 342, 135 S. W. 535, holds an ordinance of Dallas establishing a commission to fix telephone rates, etc., unconstitutional on its face. In *Ex parte Battis*, 40 Tex. Cr. R. 112, 48 S. W. 513, it was an ordinance prohibiting commercial vehicles for hire from parking on certain downtown streets. *Ex parte Neill*, 32

Tex. Cr. R. 275, 22 S. W. 923, holds void a Seguin ordinance prohibiting sale in the city of a certain newspaper declared a nuisance. In *Ex parte Garza*, 28 Tex. Cr. R. 381, a San Antonio ordinance licensing bawdy houses held void on its face.

Prior to the decision of the Court of Criminal Appeals in *Ex parte Largent*, 162 S. W. 2d 419, it was uniformly held that even though the law be valid on its face, if the statute or ordinance did not apply to the facts in the case the defendant was not guilty and was entitled to a discharge by writ of habeas corpus when convicted on trial de novo in the county court and fined not more than $100. In *Ex parte Roquemore*, 131 S. W. 1101, 60 Tex. Cr. R. 282, the writ was granted to discharge the accused who had been convicted of violating the Sunday Law of Texas. He operated a baseball park and baseball game on Sunday. It was held that the statute when properly construed did not cover the activity of the defendant and on the admitted facts he was not guilty. This case was cited with approval by Judge Hawkins in *Ex parte Jarvis*, 3 S. W. 2d 84. In *Ex parte Jonischkiss*, 227 S. W. 952, 88 Tex. Cr. R. 574, it was held that the writ of habeas corpus was available to release one charged with a violation of a city traffic ordinance where the admitted facts did not constitute a crime under the law of Texas. In *Ex parte Butcher*, 53 S. W. 2d 781, 122 Tex. Cr. R. 39, an application for writ of habeas corpus was granted because the court declared that the operator of a laundry did not come within the provisions of a statute prohibiting labor of females more than 54 hours per week. See also *Ex parte Wall*, 91 S. W. 2d 1065; and *Ex parte Jones*, 81 S. W. 2d 706.

Before the decision in *Ex parte Largent*, supra, it was consistently held by the Court of Criminal Appeals that whether an ordinance is constitutional depends on the facts to which it is applied. During such time that court consistently held that in habeas corpus cases it could not

inquire into and determine whether an ordinance was unconstitutional *as construed and applied* to the undisputed evidence and facts of the case. In *Ex parte Baker*, 127 Tex. Cr. R. 589, 78 S. W. 2d 610, 613, the ordinance fixing fees on non-resident business representatives was held to be arbitrary and violative of the 14th Amendment as applied. The writ of habeas corpus was granted. In that case the court said: "It is a familiar rule that the validity of an act is to be determined not alone by its caption and phraseology, but also by its practical operation and effect." In *Ex parte Lewis*, 45 Tex. Cr. R. 1, 73 S. W. 811, it was held that an ordinance valid on its face was unconstitutional because of the provisions of the city charter which was introduced in evidence. In *Ex parte Mihlfread*, 128 Tex. Cr. R. 556, 83 S. W. 2d 347, it was held that an ordinance providing for the license tax upon certain occupations was void because high, excessive and confiscatory under the circumstances of the case. In *Ex parte Ernest*, 136 S. W. 2d 595, 138 Tex. Cr. R. 441, an ordinance providing for sanitary inspection of bakeries was held valid as applied to institutions within the city but invalid as applied to institutions located outside the city. The court considered the evidence. In *Ex parte Kennedy*, 78 S. W. 2d 627, Judge Hawkins wrote the opinion on rehearing. On the original hearing the ordinance was held to be constitutional on its face and the writ was held properly denied. On rehearing, concerning the relator's attack upon the zoning ordinance the court said: "Relator seems to concede that said case is decisive of the question as to the *general attack* upon the constitutionality of said ordinance, but urges that it should be held unconstitutional, *as it relates to the restriction in the use of the particular property of relator involved in the prosecution.*" The court then inquires into the question as to whether the *valid ordinance* has been applied in an unconstitutional manner, and holds that it is not violative of the Federal Constitution as applied. In *Ex parte Stein*, 135 S. W. 136, 61 Tex. Cr. R. 320, the court inquired into the evidence to determine the

constitutionality of an ordinance. See *Ex parte Degeler*, 17 S. W. 1111, 1114; *Ex parte Kearby*, 34 S. W. 635; 34 S. W. 962; and *Ex parte Dreibelbis*, 133 Tex. Cr. R. 82, 109 S. W. 2d 476.

In his opinion in the *Largent* case Judge Hawkins does not cite or discuss any of the foregoing cases but contents himself with a consideration of the cases originating in the justice or corporation court where there was no constitutional question involved and where habeas corpus was invoked as a substitute for appeal to review the sufficiency of the evidence. *Ex parte Slawson*, 139 Tex. Cr. R. 607, 141 S. W. 2d 609, is said to be controlling. There the defendant was convicted of breaching the peace and contended there was no evidence showing guilt. The case was not within the exception allowing use of the writ in such cases. What was contended in the *Largent* case was that the admitted facts or undisputed evidence showed that relator was not within the terms of the ordinance and if considered within such provisions then such application of the ordinance to the undisputed evidence violated the Federal Constitution.

Concerning the host of cases above enumerated Judge Hawkins in *Ex parte Largent*, supra, says: "If some cases from this court may be found which seem to be in conflict with such holding they are out of harmony with said Art. 53 and the great number of cases construing said article. Either that, or the claimed conflict is more apparent than real." (*Largent* [No. 349 Oct. T. 1942, this Court] R. 27) This shows that the real issue was evaded by that court. The dissenting opinion of Judge Graves in the *Largent* case clearly establishes the fact that the majority holding was fictitious, arbitrary and contrary to the established precedent of Texas.

Unless this Court so holds and reverses the *Largent* case it will be impossible now to say that there is an opportunity for a full review of a judgment of this sort in a higher court of Texas by way of writ of habeas corpus.

Under this type of holding by that court the duty of the state courts to protect citizens from oppressive, discriminatory, burdensome and harsh enforcement of an ordinance so as to abridge the constitutional rights of the citizens *cannot be inquired into on habeas corpus.*

Such a holding therefore makes the United States Supreme Court the only court which can fully review *in one proceeding* ALL questions presented on this appeal.

If we are forced to apply to any of the state courts for further review by a writ of habeas corpus, the court or judge will be confined to considering and determining *whether or not the ordinance on its face violates the federal Constitution;* and then if found valid, an appeal must be taken to the Court of Criminal Appeals. Should that appellate court hold the ordinance valid *on its face* we would have to come to this Court restricted to consideration of the single question, viz., WHETHER THE ORDINANCE ON ITS FACE VIOLATED THE UNITED STATES CONSTITUTION, which is the *only* question the Court of Criminal Appeals says it can consider in habeas corpus proceedings of this kind.

Unless this Court holds that the refusal of the Court of Criminal Appeals, in *Ex parte Largent,* supra, to pass on all constitutional questions presented was a fictitious non-federal disposition to avoid passing on the *real federal question raised,* this Court must, under the rule announced repeatedly, confine its consideration to the federal questions to which the state court restricted its consideration under local procedure in such cases. See *Northw'n Bell Tel. Co. v. Nebr. St. Ry. Com'n,* 297 U. S. 471, 473.

Under such practice, if approved in a case of this kind, when the judgment of the Court of Criminal Appeals is disposed of on *void-on-face question* in this Court, in favor of validity of the law, if we desired to have reviewed the question of whether or not the ordinance is *construed and applied* to the facts and undisputed evidence in such a manner as to violate the Federal Constitution it would

be necessary to go back to the trial court and bring up the judgment of such trial court to this Court directly from the trial court.

This Court has approved the practice of taking a second appeal directly to this Court to review the federal questions raised in the record after a first appeal has been taken to state appellate court on the non-federal questions. (*Kentucky* v. *Powers*, 201 U. S. 1, 37) But this rule would not apply here, for in Texas in this type of case no further appeal lies to a higher court to review the judgment on any question. *Kentucky* v. *Powers*, supra, does not warrant a requirement that a new proceeding must be instituted in the state court by habeas corpus as condition to attempting to secure a review of the judgment by appeal under the Judicial Code.

However, if this honorable court, on consideration of the recent opinion of the Court of Criminal Appeals in the *Largent* case, supra, holds that the doctrine of that court in limiting its consideration to the question of *'unconstitutionality on its face and by its terms'* is an unreasonable abridgment of the right of habeas corpus, or is a fictitious non-federal question decided for the purpose of arbitrarily and evasively considering the federal question of whether the ordinance is unconstitutional as construed and applied, the avenue would then be open to secure a full review of the question by habeas corpus. The Court of Criminal Appeals could then be required to consider all proper federal questions correctly raised in the record.

In such event this Court could review all of the questions raised in the trial court and presented on appeal even though evaded and not passed on by the Court of Criminal Appeals.

SUCH would properly provide a defendant a *full review* of the record of conviction *by habeas corpus* in a higher state court in a case of this kind.

This Court has uniformly denied the doctrine and condemned the practice of bringing litigation from the state courts in sections, divisions, piecemeal or in parcels. A litigant is allowed only one appeal from the same judgment to the same court, in the same proceeding. See *United States* v. *Girault,* 11 How. 22, 32; *Heike* v. *United States,* 217 U. S. 423, 429.

If the doctrine of the state is correct in its attack upon the jurisdiction of this Court in this case, then a new way has been found which will allow *two* appeals to this court, one from the appellate court and another from the trial court, at different times, involving the same record, the same trial, but different judgments. In one it would be the appellate judgment or judgment in the habeas corpus proceeding, and in the other it would be the judgment of conviction rendered in the criminal proceeding originally instituted. This would compel a multiplicity of actions and appeals and be needless circuity of action. In *Carpenter* v. *Longan,* 16 Wall. 271, 21 L. Ed. 313, this Court held that the parties ought not to be driven from one forum to obtain a remedy which cannot be denied in another forum.

In the circumstance that appellant relied upon the *Largent* case (162 S. W. 2d 419) and upon this Court's denial of certiorari in same it would be unjust and a burdensome imposition to drive appellant back to the courts of Texas to seek relief which can be readily granted here, because, at time of appellant's appeal herein, the doors of such courts were closed to a full review of the judgment by habeas corpus.

Although this Court requested counsel (63 S. Ct. 325) to discuss in their briefs the question as to whether the judg-

* *Largent* v. *Reeves,* No. 349 Oct. T. 1942, ... U. S. ....., 63 S. Ct. 72, Oct. 19, 1942; rehearing denied Jan. 14, 1943, ... S. Ct. .....

ment is subject to further *full review* in the courts of Texas, it is noticed here that appellee has wholly failed to enlighten the court on the subject. Appellant has done her best to find and present all Texas cases on the subject so that the court can reach a proper conclusion in the interest of justice.

CONCLUSION

The court has jurisdiction and the judgment should be reversed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 559.—October Term, 1942.

Daisy Largent, Appellant, *vs.* The State of Texas.	On Appeal from the County Court of Lamar County, Texas.

[March 8, 1943.]

Mr. Justice Reed delivered the opinion of the Court.

This appeal brings here for review the conviction of appellant for violation of Ordinance No. 612 of the City of Paris, Texas, which makes it unlawful for any person to solicit orders or to sell books, wares or merchandise within the residence portion of Paris without first filing an application and obtaining a permit. The ordinance goes on to provide that

"if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation."[1]

A complaint in the Corporation Court of Paris charged Mrs. Largent, the appellant, with violating this ordinance by unlawfully offering books for sale without making application for a permit. She was convicted and appealed to the County Court of Lamar

[1] The applicable section of the ordinance reads as follows:

"Section 1: From and after the passage of this ordinance it shall be unlawful for any person, firm or corporation to solicit orders for books, wares, merchandise, or any household article of any description whatsoever within the residence portion of the City of Paris, or to sell books, wares, merchandise or any household article of any description whatsoever within the residence district of the City of Paris, or to canvass, take census without first filing an application in writing with the Mayor and obtaining a permit, which said application shall state the character of the goods, wares, or merchandise intended to be sold or the nature of the canvass to be made, or the census to be taken, and by what authority. The application shall also state the name of the party desiring the permit, his permanent street address and number while in the city and if after investigation the Mayor deems it proper or advisable he may issue a written permit to said person for the purpose of soliciting, selling, canvassing or census taking within the residence portion of the city which permit shall state on its face that it has been issued after a thorough investigation."

County, Texas, where a trial de novo was had.[2] There a motion was filed to quash the complaint because the ordinance violated the Fourteenth Amendment to the Constitution of the United States and at the conclusion of the evidence, there was filed a motion on the same grounds for a finding of not guilty and the discharge of the appellant from custody. Both were overruled.

Appellant's evidence shows that she carries a card of ordination from the Watch Tower Bible and Tract Society, an organization incorporated for the purpose of preaching the Gospel of God's Kingdom. The Society is an organization for Jehovah's Witnesses, an evangelical group, founded upon and drawing inspiration from the tenets of Christianity. The Witnesses spread their teachings under the direction of the Society by distributing the books and pamphlets obtained from the Society by house to house visits. They believe that they have a covenant with Jehovah to enlighten the people as to the truths accepted by the Witnesses by putting into their hands, for study, various religious publications with titles such as *Children*, *Hope*, *Consolation*, *Kingdom News*, *Deliverance*, *Government* and *Enemies*.

Mrs. Largent offered some of these books to those upon whom she called for a contribution of not to exceed 25 cents for a bound book and several magazines or tracts. If the contribution was not made, the appellant, in accordance with the custom of the Witnesses, would frequently leave a book and tracts without receiving any money. Appellant was making such distributions when arrested. She had not filed an application for or received a permit under the ordinance.

The Witnesses look upon their work as christian and charitable. To them it is not selling books or papers but accepting contributions to further the work in which they are engaged. The prosecuting officer contended that the offer of the publications and the acceptance of the money was a solicitation or sale of books, wares or merchandise. At the conclusion of the hearing, which was without a jury, the judge found appellant guilty of violating the ordinance of the City of Paris and fined her one hundred dollars

[2] Vernon's Texas St. 1936, Art. 876 (Code of Criminal Procedure), provides: "Appeals from a corporation court shall be heard by the county court except in cases where the county court has no jurisdiction, in which counties such appeals shall be heard by the proper court. In such appeals the trial shall be de novo. Said appeals shall be governed by the rules of practice and procedure for appeals from justice courts to the county court, so far as applicable."

The appeal was brought here under Section 237(a) of the Judicial Code which provides for review of a final judgment of the highest court of a state in which a decision could be had. By our order of December 21, 1942, we requested counsel to discuss whether this judgment could be fully reviewed on this record by a higher state court by habeas corpus or other proceeding. Under the statutes of Texas, no appeal lies from the judgment of the County Court imposing a fine of this amount. Vernon's Texas St. 1936, Article 53 (Code of Criminal Procedure);[3] *Ex parte Largent*, 162 S. W. 2d 419, 421, and cases cited. The appellant, under Texas practice, apparently could test by habeas corpus the constitutionality on its face of the ordinance under which she was convicted but may not use that writ to test the constitutionality of the ordinance as applied to the act of distributing religious literature. Cf. *Ex parte Largent, supra.* Since there is by Texas law or practice, no method which has been called to our attention for reviewing the conviction of appellant, on the record made in the county court, we are of the opinion the appeal is properly here under Section 237(a) of the Judicial Code. The proceeding in the county court was a distinct suit. It disposed of the charge. The possibility that the appellant might obtain release by a subsequent and distinct proceeding, and one not in the nature of a review of the pending charge, in the same or a different court of the State does not affect the finality of the existing judgment or the fact that this judgment was obtained in the highest state court available to the appellant. Cf. *Bandini Co.* v. *Superior Court*, 284 U. S. 8, 14; *Bryant* v. *Zimmerman*, 278 U. S. 63, 70.

Upon the merits, this appeal is governed by recent decisions of this Court involving ordinances which leave the granting or withholding of permits for the distribution of religious publications in the discretion of municipal officers.[4] It is unnecessary to determine whether the distributions of the publications in question are sales or contributions. The mayor issues a permit only if after thorough investigation he "deems it proper or advisable." Dis-

[3] "Court of Criminal Appeals.—The Court of Criminal Appeals shall have appellate jurisdiction co-extensive with the limits of the State in all criminal cases. This article shall not be so construed as to embrace any case which has been appealed from any inferior court to the county court or county court at law, in which the fine imposed by the county court or county court at law shall not exceed one hundred dollars."

[4] Lovell v. Griffin, 303 U. S. 444, 447, 451; Schneider v. State, 308 U. S. 147, 157, 163; Cantwell v. Connecticut, 310 U. S. 296, 302.

semination of ideas depends upon the approval of the distributor by the official. This is administrative censorship in an extreme form. It abridges the freedom of religion, of the press and of speech guaranteed by the Fourteenth Amendment.[5]

Reversed.

Mr. Justice RUTLEDGE took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.

[5] Chaplinsky v. New Hampshire, 315 U. S. 568, 570, 571; Cantwell v. Connecticut, 310 U. S. 296, 303; Gitlow v. New York, 268 U. S. 652.